

DEVON LONDON
RED BARN MOTORS VS. COX ENTERPRISES

October 25, 2016

1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF INDIANA
3 INDIANAPOLIS DIVISION
4

5 RED BARN MOTORS, INC., CASE NO.
6 PLATINUM MOTORS, INC., 1:14-cv-1589-TWP-
7 MATTINGLY AUTO SALES, DKL
8 INC., AND YOUNG EXECUTIVE
9 MANAGEMENT & CONSULTING
10 SERVICES, INC.,
11 individually and on
12 behalf of other members
13 of the general public
14 similarly situated,
15

16 VERSUS

17 COX ENTERPRISES, INC.,
18 COX AUTOMOTIVE, INC.,
19 NEXTGEAR CAPITAL, INC.
20 F/K/A DEALER SERVICES
21 CORPORATION, successor by
22 merger with Manheim
23 Automotive Financial
24 Services, Inc., and JOHN
25 WICK

Corporate Deposition of RED BAN MOTORS,
INC., through its representative DEVON LONDON, 25852
Plantation Avenue, Denham Springs, Louisiana 70726,
taken in the offices of Lugenbuhl, Wheaton, Peck,
Rankin & Hubbard, 9311 Bluebonnet Boulevard, Suite
A, Baton Rouge, Louisiana on Tuesday, October 25,
2016, commencing at 9:07 a.m.



EXHIBIT 6

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1 Q. Okay. So since 2011, you've been general
2 sales manager?

3 A. Yes.

4 Q. Okay. Any other positions at Red Barn?

5 A. No. I mean, you can say general sales
6 manager, general manager. It's the same thing over
7 a small used car operation.

8 Q. Okay. Where is Red Barn?

9 A. At 26007 LA Highway 16, Denham Springs,
10 Louisiana 70726.

11 Q. And has that been true since you've been
12 there?

13 A. Yes.

14 Q. Okay. So as general sales manager,
15 general manager, how would you describe your -- your
16 responsibilities at Red Barn?

17 A. My responsibility was to oversee the
18 operations, oversee the employees, report back to
19 Mr. Richardson, the owner, you know, activities that
20 transpired and fulfill his desires to operate the
21 company.

22 Q. Okay. And so it's not just focused on
23 sales, you're basically running the business?

24 A. Pretty much.

25 Q. Okay. And tell me who Mr. Richardson is?

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1 A. He's my father-in-law.

2 Q. Okay. It's Don Richardson, Donald?

3 A. Don Richardson.

4 Q. Is it Donald or Don?

5 A. Donald --

6 Q. Okay.

7 A. -- Donald B.

8 Q. And he's an owner of Red Barn?

9 A. Yes.

10 Q. Is he the only owner?

11 A. I believe he is an owner with his wife.

12 I may be incorrect on that.

13 Q. And her name is?

14 A. Barbara Richardson.

15 Q. Are you still his son-in-law?

16 A. Yes.

17 Q. When did you marry into the family?

18 A. I married into the family in 2003.

19 Q. Okay. That's when you were still in Las
20 Vegas?

21 A. Yes.

22 Q. Okay. As general manager, do you report
23 to Mr. Richardson on a day-to-day basis or is he
24 more of an absentee owner?

25 A. No. I report to him, I wouldn't say

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1 every single day, but on a very regular basis.

2 Q. Okay.

3 MR. COMAN:

4 And let me lodge an objection to the
5 term "absentee owner."

6 Please, if you could give me a
7 chance to think. I'm not exactly the fastest
8 person in the world.

9 BY MR. McCARTER:

10 Q. And high level, what is the business of
11 Red Barn?

12 A. What was the question?

13 Q. What is the business of Red Barn, how
14 does it make money?

15 A. Basically, it purchases used cars and
16 resells those used cars for a profit.

17 Q. Does it sell any related products like --
18 like you did at Findlay, gap insurance, warranties,
19 does it do any financing?

20 A. We did for a short period of time, but
21 for the most part, no.

22 Q. What period of time did you sell those
23 other products?

24 A. That was probably sometime in the -- mid
25 2011.

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1 Q. Okay. At a high level, was -- was
2 Findlay Automotive in the same business of buying
3 and selling cars for profit?

4 A. Yes.

5 Q. Where did Findlay gets its cars generally
6 to resell?

7 A. At automobile auctions or dealer
8 trade-ins.

9 Q. Anywhere else you can think of, purchases
10 directly from other dealers, on-line sales, anything
11 like that?

12 A. There would be purchases from other
13 dealers, very infrequently. Also, very infrequently
14 -- very infrequently, a customer would come in and
15 want to just sell their car outright.

16 Q. Okay. And is that generally true of Red
17 Barn as well, where -- where does Red Barn get its
18 cars?

19 A. Red Barn basically gets its cars from the
20 auto auctions, trade-ins, and occasionally from a
21 customer that would come in and want to just sell
22 the car outright.

23 Q. What -- what auto auctions does Red Barn
24 buy and sell from now?

25 A. As of right now, Oak View Auto Auction.

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1 Q. Where is that?

2 A. That is on Flannery Road in Baton Rouge.

3 Q. Okay. Anywhere else?

4 A. Long Beach Auto Auction.

5 Q. Is that in Mississippi?

6 A. That's in Mississippi, Long Beach,
7 Mississippi.

8 Q. Any other auction?

9 A. And ABC Baton Rouge.

10 Q. Are you a buyer and seller at all of
11 those or just a buyer?

12 A. Buyer and seller.

13 Q. And I'm sorry to keep jumping back and
14 forth, but I keep thinking of new questions. With
15 Findlay, where did they -- what auctions did they
16 generally go to?

17 A. Findlay would go to -- I don't remember
18 the names of them. There was one large Manheim
19 auction and two smaller independent auctions.

20 Q. In Nevada?

21 A. In Nevada.

22 Q. All right. So back to Red Barn, auto
23 auctions, trade-ins, and sometimes customers would
24 sell a car outright to you?

25 A. Correct.

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1 Q. Do you ever buy from other dealers
2 directly?

3 A. I don't believe we have, no.

4 Q. Okay. Do you ever buy from other on-line
5 sources like eBay Motors or Smart Auction or
6 anything like that?

7 A. We have bought several vehicles on eBay.

8 Q. Okay. Recently, in the last year or two?

9 A. No. That was -- that was earlier in the
10 business development.

11 Q. Just a rough time frame?

12 A. 2011.

13 Q. Okay. So is Red Barn a licensed used car
14 dealer?

15 A. Yes, with the Louisiana Used Motor
16 Vehicle Commission.

17 Q. Are you only licensed in used cars or can
18 you sell -- buy and sell new cars, too?

19 A. We are only licensed in used cars. The
20 license is all inclusive of like RVs and motorcycles
21 and things like that, trailers, but we don't really
22 get into that.

23 Q. Okay.

24 A. We stick with used cars and trucks.

25 Q. And you have the -- just the one lot in

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1 Denham Springs?

2 A. Yes.

3 Q. How many cars do you have on your lot at
4 this time?

5 A. At this time, there are approximately 37
6 --

7 Q. Okay.

8 A. -- 37 to 40.

9 Q. Do you know when Red Barn first opened?

10 A. I don't know the exact date.

11 Q. Okay. I think I'll have some records in
12 a minute that show 2010 was the corporate
13 organization. Does that sound like the rough
14 starting time?

15 A. That sounds correct.

16 Q. In fact, let me just go ahead and show
17 you.

18 MR. McCARTER:

19 We'll call this Exhibit #2.

20 BY MR. McCARTER:

21 Q. And I'll represent to you this is just a
22 printout from the Louisiana Secretary of State
23 website related to Red Barn Motors, Inc. I know you
24 may not have seen this record before, but you can
25 see in the middle that it shows a filing date of

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1 February 26, 2010. Do you see that?

2 A. Uh-huh.

3 Q. Do you have any reason to think that
4 wasn't roughly the date of organization for the
5 company?

6 A. That was probably the date of
7 organization.

8 Q. Okay. And it shows -- on the second page
9 of that exhibit, it shows Donald Richardson as
10 president and Barbara Richardson as
11 secretary-treasurer. Is there any reason to think
12 that's not accurate?

13 A. No.

14 Q. Okay. And is the company still in good
15 standing, to your knowledge?

16 MR. COMAN:

17 Objection as to vagueness. Good
18 standing as to the Secretary of State or good
19 standing as --

20 MR. McCARTER:

21 If you don't mind, let's just do
22 basic objections like the federal rules
23 instead of directing his answers.

24 MR. COMAN:

25 Sure.

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1 MR. McCARTER:

2 You can object to form.

3 MR. COMAN:

4 Let me make that objection to form.

5 MR. McCARTER:

6 Okay.

7 BY MR. McCARTER:

8 Q. So do you have any reason to think you're
9 not still a -- an organized company that's paid its
10 dues with the Louisiana Secretary of State?

11 A. No.

12 Q. Thank you. And the location has been the
13 same lot in Denham Springs the whole time?

14 A. Correct.

15 Q. Okay. Do you know -- does -- does Red
16 Barn Motors, Inc., file its own tax returns, to your
17 knowledge?

18 A. It does with the help of a firm called
19 Greg Kennedy.

20 Q. Greg Kennedy?

21 A. Kennedy, K-E-N-N-E-D-Y.

22 Q. That's a CPA or something?

23 A. CPA.

24 Q. Okay. Do you think that's been true
25 since 2011?

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1 A. Yes.

2 Q. Are you involved in helping prepare those
3 returns?

4 A. No, I am not.

5 Q. Okay. Do you know if Red Barn Motors,
6 Inc., has used any other trade names since 2010?

7 A. Trade names, the only trade name would be
8 -- and this is, again, not -- I -- I don't -- I may
9 not understand the question, but as a buy here/pay
10 here, there is a d/b/a as Red Barn Auto Finance.

11 Q. Okay. And that's the only d/b/a you can
12 think of?

13 A. Correct.

14 MR. McCARTER:

15 I'm going to show you what I'm going
16 to mark as Exhibit #3.

17 BY MR. McCARTER:

18 Q. And I'll represent to you again these are
19 further printouts from the Louisiana Secretary of
20 State's website and it -- it does seem to show that
21 Red Barn Auto Finance is a registered trade name
22 that you mentioned. Do you see that on the first
23 page?

24 A. Yes.

25 Q. Okay. And it shows it as -- as still a

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1 So since that question focused on
2 the consumer, number 7, obviously, does not.

3 MR. McCARTER:

4 Okay. Number 7 says, "Any financing
5 arrangements Red Barn has had with any
6 financing company, auction or third party" --
7 which a consumer would be -- "since
8 December 3, 2007, including the transaction
9 history and current status of that
10 arrangement."

11 And then 22 and 23 speak to Red
12 Barn's damages to the extent trade-ins are an
13 integral part of their sales and their
14 business, then how they handle and price
15 trade-ins will affect what their damages are
16 and what they've done to mitigate those
17 damages.

18 MR. COMAN:

19 I've lodged my objection.

20 You can answer, if you know.

21 THE WITNESS:

22 Okay. Can you repeat the question?

23 MR. McCARTER:

24 Sure.

25 BY MR. McCARTER:



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1 Q. At a high -- I just want to know, at a
2 high level, how do you handle trade-ins? How do you
3 price them, and how do you work them into your
4 retail deals?

5 A. At high level, there is a -- there is not
6 a high level of trade-ins.

7 Q. Okay.

8 A. There is a very low level of trade-ins.
9 I would say we may get one to two trade-ins a month.
10 We would value those vehicles based off of NADA,
11 Kelley Blue Book, MMR, and the condition of the
12 vehicle.

13 Q. And then do you take that off the net
14 price of the car you're selling? Do you buy them
15 outright, or do you handle it some other way?

16 A. We show it as a trade credit on the
17 purchase agreement. Which then, in turn, in the
18 state of Louisiana, they don't end up paying taxes
19 twice.

20 Q. And then, if they have a lien
21 outstanding, you have to pay off the lienholder to
22 get the title?

23 A. Correct.

24 Q. Do you commonly turn around and try to
25 retail those, or do you take them to auction, or

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1 both?

2 A. Both.

3 Q. All right. Let's talk about auto
4 auctions.

5 You said your -- Red Barn is currently or
6 recently dealing at Oak View, ABC Baton Rouge and --
7 remind me of the third?

8 A. Long Beach.

9 Q. Long Beach. Have you dealt at any other
10 auctions, that you can recall, in the last five
11 years?

12 A. We have dealt with Manheim Lafayette and
13 Manheim New Orleans.

14 Q. At a high level, is the process of
15 bidding on and buying cars the same across all five
16 of those auctions?

17 A. Can you repeat the question?

18 Q. So I'm just -- I want to talk to you
19 about the auction purchase process.

20 A. Okay.

21 Q. So I'm saying, is there a major
22 difference in the way that works at those five
23 auctions?

24 A. No.

25 Q. Okay. And so please correct me if this



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1 is wrong. I am just trying to summarize to move
2 this more quickly.

3 But you basically identify a car that you
4 are interested in. You bid on it along with other
5 dealers, if they are interested. And if you have
6 the high bid, you win the car?

7 MR. COMAN:

8 Objection as to form.

9 You can answer.

10 THE WITNESS:

11 Yes.

12 BY MR. McCARTER:

13 Q. Okay. And say you're the winning bidder
14 on a car at these auctions.

15 Then what happens next with that car?
16 How do you take the car back to your lot?

17 A. Basically, it depends on the auction. At
18 ABC Baton Rouge, they have just recently allowed us
19 to write checks for the vehicle.

20 Q. So by that you mean Red Barn's business
21 checks?

22 A. Correct.

23 Q. Okay. And when did that -- when did they
24 recently begin to allow that again?

25 A. Probably within the last six months.

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1 Q. Before that, what did they allow?

2 A. Before that, we were cash only.

3 Q. Cash?

4 A. Cash, cashier's check.

5 Q. Certified check, same thing?

6 A. Cashier's check.

7 Q. Okay.

8 A. I would have to go to the bank and get a
9 cashier's check.

10 Q. Okay. What about Oak View? How do you
11 acquire a car there?

12 A. Oak View, I have to pay cash or certified
13 funds.

14 Q. Still to this day?

15 A. Still to this day.

16 Q. Okay. And what about Long Beach?

17 A. Long Beach is cash or certified funds.
18 And they require us to put up a thousand-dollar
19 deposit.

20 Q. That -- is that a standing deposit that
21 you've paid, and it just sits there?

22 A. Yes.

23 Q. Okay.

24 A. You get it back at the end of auction if
25 there's no if bids. But to be able to participate

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1 in the auction, we have to front the thousand
2 dollars.

3 Q. Does it get applied to your purchases, or
4 do you literally get a check back?

5 A. We take the money back. Because we get a
6 cashier's check for the amount of the vehicles we
7 purchased.

8 Q. Okay. And just -- so, typically, you go
9 in with a bunch of cashier checks in hand, or do you
10 go to a bank nearby and get what you need? Or how
11 does that work?

12 A. I go to a bank nearby and get what we
13 need.

14 Q. And has that changed over time? Were you
15 previously able to write business checks at those
16 auctions?

17 A. Yes.

18 Q. And when did that change?

19 A. That changed after we were listed in the
20 KO book.

21 Q. When was that?

22 A. Sometime around March to April of 2013.

23 Q. And what is your understanding of what
24 the KO book is?

25 A. My understanding is it is a list of

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1 dealers that have had adverse relationships with
2 floorplan companies, auction houses, what have you,
3 that tracks those dealers and basically sets the
4 parameters as to how you can -- can or cannot buy
5 cars.

6 Q. Do you have a sense of who keeps that
7 list?

8 A. I do not know.

9 Q. And so you're -- but you're still able to
10 deal at Oak View, Long Beach and ABC.

11 So what is your sense of the change?

12 A. Well, number one, we can't use checks.

13 Q. Okay.

14 A. And, number two, we have to use -- you
15 know, we have to put up a deposit to be able to
16 purchase.

17 Q. Okay. All right. We'll come back to the
18 KO book.

19 And so when you were dealing at Manheim
20 Lafayette and Manheim New Orleans, how would you pay
21 for cars there?

22 A. We would, I believe, generally floorplan
23 them off.

24 Q. With DSC or others?

25 A. DSC or AFC.

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1 Q. All right. But is it fair to say you
2 have to make some form of payment to the auction to
3 take the car out?

4 A. That is correct.

5 Q. And one way to do that is cash?

6 A. Correct.

7 Q. One way to do that is cashier's checks?

8 A. Yes.

9 Q. One way to do that is to designate a
10 prearranged floorplaner?

11 A. Yes.

12 Q. Okay.

13 MR. COMAN:

14 And if I could -- I'm sorry to
15 interrupt.

16 I would like to lodge an objection
17 as to form as to which auction.

18 MR. McCARTER:

19 Okay.

20 BY MR. McCARTER:

21 Q. And at least at some auctions, in some
22 cases, you have been able to pay with business
23 checks?

24 A. One auction.

25 Q. Okay. But prior to going in the KO book,

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1 you could write business checks at any of those
2 auctions?

3 A. No. Prior to going -- oh, yes. Prior to
4 going into the KO book, we could write business
5 checks at any of those auctions.

6 Q. Okay. Did you use DSC floorplan credit
7 at all five of those auctions, or just the Manheim
8 auctions?

9 A. At all five, I believe.

10 Q. Okay. All right. So when you make some
11 form of payment at the auction, do you get some
12 paperwork? I mean, how do you get the car out of
13 the auction?

14 A. You get a auction slip. You also get a
15 gate release, and that release allows you to take
16 the vehicle off the lot.

17 Q. Once you take it off the lot, can you
18 begin selling it?

19 A. Yes.

20 Q. Do you always do that from your Red Barn
21 Motors lot, or do you sometimes sell from other
22 places?

23 A. No, every -- all sales are done from Red
24 Barn Motors' lot.

25 Q. Is the title to the vehicle always

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1 available when you buy it at auction?

2 A. No.

3 Q. When would it not be?

4 A. When it has not been provided to the
5 auction by the dealership that is representing it or
6 the company that is representing it.

7 Q. And are those called TA or title absence
8 sales?

9 A. I don't know the terminology, but.

10 Q. That's what Mr. Mattingly, one of the
11 other plaintiffs, told me.

12 A. Okay.

13 Q. He suggested that they were called "title
14 absent."

15 A. Okay.

16 MR. COMAN:

17 I'm going to object.

18 BY MR. McCARTER:

19 Q. I am not asking if you agree with that,
20 but have you heard the term the "title absent"
21 before?

22 A. No.

23 MR. COMAN:

24 I'm going to object to the form.

25 Again, please allow me a small bit

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1 of time.

2 BY MR. McCARTER:

3 Q. But it's not uncommon for the title to
4 not be there at the time of the auction sale?

5 A. That is correct.

6 Q. Okay. Have you ever sold a car at
7 auction without the title?

8 A. Yes.

9 Q. Okay. And then you eventually provide it
10 later?

11 A. Yes.

12 Q. And when do you get paid by the auction,
13 as a seller?

14 A. When do we get paid by the auction?
15 You're talking about cars that I sold at auction?

16 Q. Correct.

17 A. When we produce the title.

18 Q. Okay. Do you ever retail a car without
19 the title present?

20 A. Yes.

21 Q. In what circumstances would you do that?

22 A. Circumstances where somebody is
23 interested in purchasing a vehicle and the title
24 isn't available.

25 Q. Like, perhaps you are still waiting for

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1 it from the auction?

2 A. Or from the floorplan company.

3 Q. Okay. Do you have any floorplaner now at
4 Red Barn?

5 A. No.

6 Q. Okay. Do you have any other, sort of,
7 commercial credit or financing?

8 A. No.

9 Q. Has that been true since the bankruptcy
10 in the 2013 time frame?

11 A. Correct, yes.

12 Q. Okay. Do you keep some sort of file or
13 deal jacket on the cars you buy and sell?

14 A. Yes.

15 Q. I understand there may be some record in
16 your DMS software on each vehicle; is that correct?

17 A. Correct.

18 Q. But is there a physical file apart from
19 that?

20 A. Yes.

21 Q. Okay. And what do you -- do you have a
22 name for that? Do you call it a deal jacket or
23 something?

24 A. Deal jacket.

25 Q. Okay. How far back do you keep your deal

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1 jackets?

2 A. How are you -- like, how far back do we
3 keep them from when we --

4 Q. I mean how far back in time do you have
5 deal jackets?

6 A. We had them until -- from the beginning
7 of time until the flood.

8 Q. Okay. So they've been destroyed in the
9 flood?

10 A. Yes.

11 Q. Every one?

12 A. Not all of them, no.

13 Q. Okay. How -- is there -- are there some
14 years that were destroyed and some not, or is it
15 random?

16 A. There are some years that were destroyed,
17 some not. I don't know which ones. I haven't gone
18 through and, you know, tabulated which ones were and
19 which ones weren't.

20 Q. Okay. And, at this point in time, are
21 you expecting to re-open after the flood damage is
22 repaired?

23 A. Yes.

24 Q. Okay. All right. So if you bought a car
25 at auction when you had a DSC floorplan, what was

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1 the process at auction? How would you pay for the
2 car with the floorplan?

3 A. I would tell the counter clerk to
4 floorplan the vehicle on whichever floorplan I
5 chose. You know, DSC or AFC.

6 Q. And is it your understanding that DSC
7 stands for Dealer Services Corporation?

8 A. Yes.

9 Q. And is it your understanding that AFC
10 stands for Automotive Finance Corporation?

11 A. Yes.

12 Q. Okay. And when you would tell the clerk
13 to put it on your floorplan, what happened next,
14 from your perspective?

15 MR. COMAN:

16 Objection as to form.

17 You can answer it.

18 THE WITNESS:

19 They would give us a gate release on
20 the vehicle, and we would be able to take
21 possession of the vehicle.

22 BY MR. McCARTER:

23 Q. And if you don't know, it's fine.

24 But do you know whether they checked your
25 credit availability in some way or would they have

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1 that in hand already?

2 A. I know occasionally they called Stuart to
3 check credit availability on a couple of occasions.

4 Q. And who's Stuart?

5 A. Stuart LaBauve. He was our account
6 representative.

7 Q. For DSC?

8 A. For DSC.

9 Q. But sometimes you wouldn't see that
10 happen, they would just put it on your floorplan?

11 MR. COMAN:

12 Objection as to form.

13 You can answer, if you know.

14 BY MR. McCARTER:

15 Q. You said sometimes they called Stuart and
16 checked availability. But that sounds like
17 sometimes they did not?

18 A. I don't know if they did or did not in
19 those instances.

20 Q. Okay. Do you have any insight as to how
21 the auction knew how much credit you had available
22 on your DSC line?

23 A. No.

24 Q. Okay. And if you put a car on your DSC
25 line, did you get a check for that car, or did

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1 some -- did DSC settle up with the auction?

2 MR. COMAN:

3 Objection as to form.

4 You can answer.

5 THE WITNESS:

6 DSC paid the auction.

7 BY MR. McCARTER:

8 Q. Do you recall ever putting a non-auction
9 car on your DSC line?

10 A. A non-DSC car?

11 Q. No. A non-auction car.

12 A. A non-auction car?

13 Q. Yes.

14 A. There may have been -- there may have
15 been a handful of instances, but I don't recall.

16 Q. Okay. Was the process the same? You
17 just call somebody and say, put it on the line?

18 A. I believe, in those instances -- I think
19 Stuart would have to come and pick up the title.

20 Q. Okay. Do you recall whether you had to
21 provide a Bill of Sale or some proof of purchase?

22 A. We had -- yeah. We had to show how we --
23 how much we paid for the vehicle.

24 Q. Do you recall whether they -- DSC --

25 A. And the reason I'm saying I don't know is

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1 because we also -- I know we did it with AFC, but
2 I'm not positive if it was done with both companies.

3 Q. Okay. With auction purchases, did DSC
4 always finance the auction amount?

5 A. Yes.

6 Q. Okay. And with those cars that were not
7 purchased at auction, did they always finance the
8 amount you paid for it, or was there more of a
9 varying in price?

10 A. Rephrase the question.

11 Q. Okay. I -- so you would -- presumably,
12 you would provide a title or a Bill of Sale.

13 Did they always finance the Bill of Sale
14 amount, or did they sometimes finance less?

15 A. No, they always financed the Bill of Sale
16 amount.

17 Q. Even on non-auction cars?

18 A. Correct.

19 Q. Okay. And what was the benefit to Red
20 Barn of using a DSC floorplan at auction?

21 MR. COMAN:

22 Objection to the form.

23 If you understand the question --

24 THE WITNESS:

25 Okay.

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1 MR. COMAN:

2 -- you can answer it. If you don't
3 understand the question, don't guess at it.
4 If you would like to ask him to rephrase it,
5 you can certainly do so.

6 THE WITNESS:

7 Please rephrase it.

8 MR. McCARTER:

9 Okay.

10 BY MR. McCARTER:

11 Q. So we talked about other forms of payment
12 you can use at auction, cash, cashier's check, that
13 sort of thing. So why would you use the DSC
14 floorplan at auction instead?

15 A. Basically, the relationship and the
16 convenience.

17 Q. Was it helpful not to have to come out of
18 pocket for the purchase money?

19 A. Well, in essence, we didn't have to come
20 out of pocket for the purchase money.

21 Q. If you used a floorplan?

22 A. If -- if -- if you use a floorplan or if
23 you write a check.

24 Q. Okay. So if you write a check, you don't
25 have to have the money in the bank to cover it?

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1 A. No, you have the money in the bank --

2 Q. Okay.

3 A. -- obviously. But they hold the title --
4 I mean they hold the check until the title comes in.

5 Q. Okay. And sometimes the title is there,
6 and sometimes it's not, correct?

7 A. Correct.

8 Q. But with the DSC floorplan, presumably
9 you get some time to pay after you put the car on
10 the floorplan?

11 A. With the DSC floorplan, yes.

12 Q. Okay. Typically, how much time would you
13 get to pay if you put a car on a DSC floorplan?

14 A. I believe there were three curtailments.
15 I think it was 120 days.

16 Q. Okay. If you sold a car, did you have to
17 pay sooner?

18 A. Yes.

19 Q. Do you remember the timing of that, if
20 you sold a car, how long that you had to pay?

21 A. I was told 48 hours.

22 Q. Okay. And if you didn't sell a car
23 within 60 days, you can re-floor it and keep it
24 longer?

25 A. Yes.

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1 Q. Okay. And then, after that, how much
2 longer could you keep it? And you said 120 days,
3 but it was 60 days and then another 30 and then
4 another 30; is that right?

5 A. I believe so.

6 Q. Okay. And did you have an understanding
7 that you would have to pay -- if you put a car on a
8 DSC floorplan, then you would have to repay that
9 principal to DSC?

10 A. Absolutely.

11 Q. Okay. And did you have an understanding
12 that you would have to pay some interest and fees
13 beyond that principal?

14 A. If it was floored, yes.

15 Q. Okay. Did you have an understanding that
16 DSC had a security interest or some other rights in
17 the vehicle until they were paid?

18 MR. COMAN:

19 Objection to the extent -- let me
20 just object to form.

21 If you understand his question --

22 THE WITNESS:

23 I -- I don't.

24 MR. COMAN:

25 Okay.

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1 BY MR. McCARTER:

2 Q. Did you -- did -- when you floored a car
3 with DSC, did DSC have any rights to the car if they
4 didn't get paid?

5 A. Yes.

6 Q. Okay. And what's your understanding of
7 what that -- their rights were?

8 A. Their rights were to take the vehicle,
9 you know, and/or charge penalties and late fees.

10 Q. Okay. And do you have a sense of whether
11 their interest was limited to the particular
12 financed vehicle, or may -- or did it extend to
13 other property of Red Barn Motors?

14 MR. COMAN:

15 Objection to the form to the extent
16 it calls for a legal conclusion.

17 If you understand his question, you
18 can answer it.

19 THE WITNESS:

20 I believe that it extended to other
21 property of Red Barn.

22 BY MR. McCARTER:

23 Q. Like what? And I am asking about your
24 understanding. I am not asking you to quote the
25 legal documents.

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1 But what was your understanding of DSC's
2 right if there was a payment default?

3 A. My understanding was there was a personal
4 guaranty. So Don Richardson would be on the hook
5 for any payment default. And you would have rights
6 to the vehicles that you had floored.

7 Q. All right. And so when you put a vehicle
8 on the DSC floorplan, how did you know when payment
9 was due on that vehicle?

10 MR. COMAN:

11 I'm going -- let me just object to
12 the form on vagueness.

13 If you understand --

14 THE WITNESS:

15 Yes, again, can you rephrase it?

16 MR. McCARTER:

17 Sure.

18 BY MR. McCARTER:

19 Q. So we talked before that you would have
20 to pay a vehicle off within a certain amount of time
21 if you sold the vehicle, right?

22 A. Correct.

23 Q. Okay. But then, if you didn't, you had
24 60 days where you could roll it over further,
25 correct?

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1 A. Correct.

2 Q. Okay. How did you keep track of when the
3 60 days ran?

4 A. We ran a report, daily, that gave us a
5 breakdown of all the -- my office manager ran a
6 report, but --

7 Q. And what did she run that report from?

8 MR. COMAN:

9 I'm sorry. Could you allow
10 Mr. London -- did you have anything further to
11 add?

12 THE WITNESS:

13 It would just tell when, in
14 chronological order or in date order, payments
15 were due, curtailments were due, principal
16 payments were due.

17 BY MR. McCARTER:

18 Q. Was that report specific to DSC, or was
19 it for any car you owned? Or something else?

20 A. No, that report was specific to DSC.

21 Q. Okay. And how did you create that
22 report?

23 A. That report was created on DSC's website.

24 Q. That's discoverdsc.com?

25 A. Yes.

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1 Q. And you ran that daily?

2 A. Yes.

3 Q. And that -- besides telling you when
4 payment was due, it would also tell you how much was
5 due on each vehicle?

6 A. Yes.

7 Q. Were -- was Red Barn Motors ever involved
8 in collateral audits with DSC? Does that mean
9 anything to you, that term?

10 A. Collateral audits, they -- where somebody
11 would come out and inspect all of the vehicles and
12 make sure they're accounted for --

13 Q. Right.

14 A. -- is that a collateral audit?

15 Q. That's what I had in mind.

16 A. Yes.

17 Q. And you were involved in those?

18 A. I was involved. The used car managers
19 were involved.

20 Q. Let's step back a second.

21 Roughly what period of time were you
22 involved with DSC -- did you have a DSC floorplan?

23 A. From 2011 to 2013.

24 Q. Okay. And do you have any recollection
25 of how often the collateral audits would be during

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1 that period?

2 A. Every 30 to 45 days.

3 Q. And is your recollection that AFC would
4 do the same thing?

5 A. Yes.

6 Q. Did you work with any other floorplaners
7 when you were at Findlay?

8 A. Not directly, no.

9 Q. Okay. All right. Were you involved in
10 applying for Red Barn's DSC line of credit?

11 A. Involved in applying -- Don Richardson
12 applied for the line of credit.

13 Q. Okay.

14 A. To the extent that I was involved, is I
15 told Don what Stuart had told me and what the
16 benefits of the line of credit would, you know, do
17 for the business. And then Don made his decision
18 based off of that.

19 Q. Okay. And did DSC request certain
20 information from the dealership, and did you help
21 provide any of that?

22 A. I know there was some information
23 requested, but I would have just turned that over to
24 the office manager and told the -- told them to
25 produce it.

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1 Q. And that was Sharon Roach, at the time?

2 A. I believe so.

3 Q. Let's step back to that.

4 You said, what Stuart had told you about
5 the benefits of the line.

6 Do you -- what do you recall about the
7 timing of that conversation or conversations? Like,
8 when did you talk to Stuart in terms of getting the
9 line set up?

10 A. It was in -- I think somewhere around May
11 to June of 2011.

12 Q. And what do you recall was said in those
13 conversations?

14 A. I recall he -- when soliciting us, he
15 told us -- he told me that the interest -- one thing
16 that sticks out in my mind was that the interest
17 rate was 4 percent, which it turned out not to be.
18 He told us -- told me the benefits of -- you know,
19 the advantages of having a floorplan and the amounts
20 that you could apply for and, you know, basically
21 asked if I was the one that had the ability to enter
22 into the agreement. And I told him no, and that's
23 when the appointment was set up with Don Richardson.

24 Q. Okay. What do you recall, if anything,
25 that he said about the benefits of having a

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1 floorplan?

2 A. I don't.

3 Q. And you -- do you have any records at Red
4 Barn that would provide clarity on what he said?

5 A. No.

6 Q. Okay. And you said the interest rate
7 turned out not to be 4 percent.

8 What's your recollection of what it
9 turned out to be?

10 A. I could never figure that out.

11 Q. But somehow you know it wasn't 4 percent?

12 A. Correct.

13 Q. You couldn't figure out, so how do you
14 know it wasn't 4 percent?

15 A. Because in looking at the calculations
16 and the interest charged, it was much higher than a
17 4 percent figure.

18 Q. Okay. And did he say anything else about
19 interest? For example, how long -- when it would
20 start accruing or anything like that?

21 A. I don't recall.

22 Q. Do you have any records at Red Barn
23 Motors that would improve your recollection on that
24 point?

25 A. Just the contract.

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1 Q. So your recollection is that, at some
2 point, the deal with DSC got reduced to contract,
3 right?

4 A. Yes.

5 Q. Were you involved in reviewing and
6 signing those?

7 A. I viewed it. I did not sign it.

8 Q. Did you review them before Mr. Richardson
9 signed and give him your input?

10 A. Yes.

11 Q. Okay. And what do you recall was said
12 during that discussion?

13 A. Just the benefit of having the
14 availability to have a credit line that would allow
15 us to, you know, increase sales volume. And that's
16 basically the gist of it. Just the benefits of
17 having the floorplan.

18 Q. Okay. So after reviewing the contracts,
19 you basically conveyed to Mr. Richardson that you
20 thought it made sense to move forward with DSC?

21 A. Yes.

22 Q. Do you recall whether Red Barn had those
23 contracts reviewed by counsel?

24 A. They did not.

25 Q. Other than yourself and Mr. Richardson,

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1 do you know if anybody else reviewed the contracts
2 pre-signing?

3 A. No one.

4 Q. Do you recall any discussion with
5 Mr. LaBauve or anybody else at DSC about your right
6 to consult with counsel?

7 A. I do not recall.

8 Q. Okay.

9 A. I don't remember that at all.

10 Q. Okay. I am going to show you what we are
11 going to call Exhibit #4. All right.

12 MR. McCARTER:

13 And this document is NextGear004545
14 through 4549. Or, I am sorry, NG. Excuse me.
15 Let me restate the Bates numbers. It's
16 NG004545 through 4550.

17 BY MR. McCARTER:

18 Q. You can take as much time as you want
19 with it, but I'll call your attention to the
20 specific questions.

21 So, to be fair to you, this looks like a
22 NextGear internal -- or an DSC internal document
23 that you may never have seen before.

24 Have you seen this document before?

25 A. No.

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1 Q. Okay. It suggests --

2 MR. COMAN:

3 Let me just lodge an objection.
4 Hold on, please. Let me just lodge an
5 objection. As Mr. London has stated that he
6 has never seen this, and based on your
7 additional representation that this is an
8 internal DSC document, any questions,
9 therefore, following that, would lack any
10 foundation, and we would lodge an objection.

11 MR. McCARTER:

12 Okay. Fine. But I'm not asking him
13 to authenticate the document. I want to ask
14 him about specific information in the
15 document.

16 BY MR. McCARTER:

17 Q. So it suggests, on the first page, a DSC
18 start date of July 28, 2011.

19 And do you recall whether that was the
20 DSC start date for Red Barn, or not?

21 A. I don't know if that was the exact date.

22 Q. Okay. Does it seem roughly correct?

23 A. Roughly.

24 Q. Okay. At the bottom, do you see there is
25 an account executive recommendation? And

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1 recognizing you didn't prepare this document, it
2 is -- it says, in that last sentence, "They do
3 prefer using DSC over AFC and would like to increase
4 their line with us for tax time coming up so they
5 can stock as much inventory as possible and continue
6 to grow and be profitable."

7 Do you see that language?

8 A. Yes.

9 Q. Do you recall having any discussions like
10 that or related to that point with Stuart or anybody
11 else at DSC?

12 A. I don't recall that.

13 Q. Okay. And this document is, at least
14 dated on its face, September 26, 2012.

15 Do you recall being involved in any kind
16 of a request for a line increase or discussions of a
17 line increase with DSC around that time?

18 A. What do you mean "a line increase"?

19 Q. Okay. So this is -- this looks like --
20 you know, it's roughly a year and a couple of months
21 after you started with DSC.

22 A. Okay.

23 Q. Do you remember asking for more credit or
24 a bigger line of credit with DSC around that time?

25 A. DSC would -- I don't know if it was DSC

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1 or AFC, but they would give an additional \$100,000
2 worth of credit at tax time or near tax time to
3 acquire more cars.

4 Q. And do you -- is that something Red Barn
5 would have been interested in around that time?

6 A. It is something -- we utilized it.

7 Q. Okay. So did you actually get extra
8 credit from DSC -- or an extra, you know, line of
9 credit from DSC around tax time?

10 A. Yes.

11 Q. Okay.

12 A. Again, I'm -- as long as I'm not confused
13 that it was AFC and not DSC.

14 Q. Okay.

15 A. Because --

16 Q. And tax time is April 15th each year? Is
17 that what you mean by tax time?

18 A. No. Tax time begins, generally, at the
19 end of February and goes through April. You know,
20 mid April, I would say.

21 Q. Okay.

22 A. That's when the bulk of the early
23 filers --

24 Q. If you'll turn to page 4548. It's about
25 four pages back. Do you see that? This mentions

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1 auctions at which -- you know, the author of this is
2 suggesting Red Barn did business. And it says, "Oak
3 View Louisiana, First Choice, Manheim and Total
4 Resources, Long Beach, Mississippi Auto Auction."

5 Do you see that?

6 A. Yes, I do.

7 Q. Do you -- would that have been accurate
8 in 2012?

9 A. Yes.

10 Q. So do you still do business at Louisiana
11 First Choice?

12 A. No.

13 Q. Okay. When did you stop doing business
14 with them?

15 A. We stopped doing business with them in
16 2013.

17 Q. Around the time of the bankruptcy?

18 A. Yes.

19 Q. And what's the reason you stopped doing
20 business with them?

21 A. For one, I was told that we were not
22 welcome at the auction. And for two, there was a
23 situation where there were some vehicles that
24 belonged to Red Barn that were seized by First
25 Choice Auto Auction, when we delivered them to sell

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1 them, that, effectively, was directed by DSC.

2 Q. Okay. So the first reason, that you were
3 not welcome, was there any more said about that?

4 A. No. Just that we were no longer welcome
5 to attend the auction.

6 Q. Who told you that?

7 A. It was the general manager. I don't know
8 his name. The gentleman right under John Poteet.

9 Q. Do you remember the timing of that
10 discussion?

11 A. The timing of that discussion was after
12 my confrontation to try to get the vehicles back.

13 Q. Just ballpark, was that spring of 2013,
14 or some other time?

15 A. That was, probably, April of 2013, I'm
16 guessing.

17 Q. Okay. And you haven't done business
18 there since?

19 A. No.

20 Q. Have you attempted to go back or request
21 reinstatement?

22 A. Not since -- not since.

23 Q. Okay. And it also mentions Total
24 Resources.

25 Did you do business at a Total Resources

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1 auction?

2 A. That was Manheim Lafayette.

3 Q. Okay. At the Total Resources auction,
4 were you buying or selling salvage units or just
5 whole-car units or what?

6 A. Just whole-car units.

7 Q. Okay.

8 A. I did not attend a salvage sale.

9 Q. All right. And then this document also,
10 in the next question, suggests that Red Barn may use
11 billboards, displays on lot, newspaper ads, auto
12 websites, eBay, Craigslist and Referral Spiffs as
13 marketing tools.

14 Do you see that language?

15 A. Yes.

16 Q. Do you -- is -- was that true in 2012?

17 A. That was true in 2012.

18 Q. Is it still true, that -- you know, just
19 prior to August of 2016?

20 A. Billboards, no. Displays on lots,
21 obviously the cars are displayed on the lot.
22 Newspaper ads, yes. Auto websites -- our DMS system
23 updates to auto websites, so, yes. eBay, we have
24 not used. Craig's List, we have not -- we have
25 used. And Referral Spiffs, we did not use.

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1 Q. Which auto site -- websites does your DMS
2 system update to?

3 A. I don't know that.

4 Q. Okay. It also suggests your website at
5 the time was www.redbarnmotorsla.com.

6 Do you see that language?

7 A. Yes.

8 Q. Was that your website at the time?

9 A. I'm not sure.

10 Q. Is that your website now?

11 A. No. It's www.redbarnmotors.net.

12 Q. Okay. And then this document also
13 suggests -- in the next question, it talked about
14 additional services offered to customers and income
15 streams. And it mentions warranties, limited BHPH,
16 gap insurance, finance reserve, mechanic shop
17 retail, vehicle registration, doc fees, prep fees,
18 temp tag fees.

19 Do you see that language?

20 A. Doc, in -- in where? Right here?

21 Q. Yes.

22 A. Doc fees, prep fees, temp tag fees.
23 Uh-huh.

24 Q. Okay. We talked about some of this
25 earlier, but was that accurate in 2012? Did you

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1 have income from each of those sources?

2 A. I don't believe we were doing mechanic
3 shop retail.

4 Q. Are the rest accurate, as of 2012?

5 A. Vehicle registration, doc fees, prep
6 fees, temp tag fees. Yes.

7 Q. Do you have any sense of what that term
8 "finance reserve" means?

9 A. That is a term for a referral fee that we
10 get from the lender, which is a flat fee, for
11 procuring a customer for their business.

12 Q. Okay. And that would be in those
13 bank-loan situations that we talked about earlier?

14 A. Correct.

15 Q. Okay. Just high level, how -- what's the
16 size of that fee, and how is it priced?

17 A. It depends on the bank itself. We -- at
18 that time, we were doing the majority of our
19 business with Southwest Finance. And they paid
20 3 percent of the payment financed.

21 Q. And we talked about some of this earlier,
22 but which of these sources of income did -- does Red
23 Barn no longer have as of, you know, pre-flood this
24 year?

25 A. Gap insurance, mechanic shop retail,

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1 warranties, vehicle registration. There is a doc
2 fee and a temp tag fee.

3 Q. And so you --

4 A. There are no prep fees.

5 Q. I'm sorry, what was the last part?

6 A. No prep fees.

7 Q. Okay. So you no longer register vehicles
8 for your consumers?

9 A. It's done through a Denham Springs
10 notary.

11 Q. Do you collect their fee and pass it
12 through, or --

13 A. Yes.

14 Q. Okay. No markup?

15 A. I don't think so, no.

16 Q. Okay. If you go to page 4549, it's the
17 next page, it suggests some of the consumer lenders
18 associated with Red Barn may have been Southwest
19 Finance, which you mentioned; Pelican Federal Credit
20 Union, which you've mentioned. It also mentions CPS
21 and Credit Plan of Hammond?

22 A. Correct.

23 Q. Do you see that language?

24 A. Yes.

25 Q. Were those sources of consumer lending

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1 used at the time?

2 A. CPS, we used for a very short period of
3 time. I don't know -- I don't remember the time
4 period, but it was very short. Pelican, we did.
5 Southwest Finance, Credit Plan of Hammond, that
6 was -- those were the general ones.

7 Q. Do you know what CPS stands for?

8 A. No.

9 Q. And I think you said earlier you are
10 still using Pelican. But you're not using the other
11 three?

12 A. No, not using CPS, Southwest Finance or
13 Credit Plan of Hammond.

14 Q. Okay.

15 MR. McCARTER:

16 Is everybody good? You need another
17 break?

18 MR. COMAN:

19 Yes, let's take a short break.

20 (Recess taken.)

21 MR. McCARTER:

22 We're going back on the record,
23 please.

24 BY MR. McCARTER:

25 Q. Mr. London, my apologies if I asked this

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1 already, but just to confirm, besides AFC and DSC,
2 Red Barn has never had a floorplan with any other
3 company?

4 A. No.

5 MR. McCARTER:

6 I'm going to show you a -- a
7 document I'm going to call Exhibit #5.

8 BY MR. McCARTER:

9 Q. And this one runs NG003581 through 3560
10 -- I'm sorry. I got that -- let me back up, 3560
11 through 3581. And I'll represent to you, Mr.
12 London, that this is a composite exhibit that's got
13 different documents in it, but they -- they
14 generally appear to be an application and a legal
15 agreement that Red Barn signed with DSC.

16 A. Uh-huh.

17 Q. Do you see that?

18 A. Yes.

19 Q. All right. And we can look at the exact
20 dates, but it looks like they're generally signed in
21 July of 2011. Do you see that?

22 A. Yes.

23 Q. Okay. And on that first page, 3560, do
24 you recognize the signature there?

25 A. 3560?

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1 Q. Yes. Whose signature is that?

2 A. That's Don Richardson.

3 Q. And he was the owner and president of Red
4 Barn at the time?

5 A. Correct.

6 Q. On that first page, that application
7 page, take a second to look at it. Do you see any
8 of the filled in information there that appears to
9 be wrong to you or inaccurate?

10 MR. COMAN:

11 I'll lodge an objection to the form.
12 If you can specify or if your question is to
13 the entire document, then I'd lodge the same
14 objection.

15 BY MR. McCARTER:

16 Q. It's obviously the form, you know, to the
17 question, but the stuff that's specific to Red Barn
18 like the name of the company, they requested the
19 floorplan amount, the address. Do you see --

20 A. I mean, I see a mistake of ownership.

21 Q. Where do you see that?

22 A. It says 100 percent.

23 Q. Okay.

24 A. I mean, I don't know -- I don't know if
25 that is 100 percent or if it's 50/50.

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1 Q. With his wife Barbara?

2 A. Yes.

3 Q. Fair enough.

4 A. I'm not positive of that.

5 Q. Okay. And then turning to the -- the
6 document that follows on the next page, it's called
7 Demand Promissory Note and Security Agreement.

8 A. Uh-huh.

9 Q. Do you see that, do you see that title?

10 A. Yes.

11 Q. Okay. And then if we skip back several
12 pages to 3569 in that exhibit --

13 A. Okay.

14 Q. -- does that look like Mr. Richardson's
15 signature again?

16 A. Yes.

17 Q. Okay. And he's signing both as
18 president, and then as a guarantor. Do you see
19 that?

20 A. Yes.

21 Q. Okay. All right. And then we will turn
22 to 3571. Do you see that document?

23 A. Yes.

24 Q. Again, that appears to be Mr.
25 Richardson's signature on the lower left-hand side.

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1 Do you see that?

2 A. Yes.

3 Q. And his initials a couple of times in the
4 document?

5 A. Uh-huh.

6 Q. Do you recall seeing this term sheet when
7 it was signed with DSC?

8 A. I don't recall seeing the term sheet when
9 it was signed, but I do recall the terms. I mean,
10 those were the terms that were represented.

11 Q. Okay. And -- and we talked about this
12 earlier, right, the 60 days, and then 30 more --

13 A. Yes.

14 Q. -- and 30 more?

15 A. Right.

16 Q. Right. And so those terms there look
17 accurate to how things worked with DSC?

18 A. Correct.

19 Q. Okay. All right. And, again, Mr.
20 Richardson's signature on the power of attorney at
21 3572?

22 A. Yes.

23 Q. On the individual guaranty that follows,
24 his signature for 3575, do you see that?

25 A. Yes.

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1 Q. Some of these, at least that one, is
2 notarized by Catherine Edwards. Do you know who
3 that is?

4 A. Yes.

5 Q. Who is she?

6 A. She is a notary in the state of Louisiana
7 in Denham Springs.

8 Q. So an independent notary, not with Red
9 Barn and not with DSC?

10 A. Not with Red Barn and not with DSC.

11 Q. Okay. And then the next document is
12 called Contract Quick Facts. Do you see 3576, 3577?

13 A. Uh-huh.

14 Q. Again, that 3577, that's Mr. Richardson's
15 signature?

16 A. Yes.

17 Q. And do you have any reason to doubt
18 that's his initials on -- on 3576 and 3577 in the
19 various blanks?

20 A. No, no.

21 Q. And then the next document at 3578 and 79
22 is an ACH authorization and request. Again, it
23 appears to be signed by Mr. Richardson, correct?

24 A. Uh-huh.

25 Q. Is that generally how Red Barn paid DSC,

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1 through ACH payments?

2 A. Yes.

3 Q. And do you recall what kind of notice or
4 confirmation or paperwork you would get when it was
5 an ACH payment to DSC?

6 A. We would get a printout stating the
7 curtailment, you know, paid -- I mean, the
8 curtailment, the interest, the principal paid, I
9 mean, just the -- the term sheet on what we just did
10 on-line.

11 Q. Okay. And would you authorize each of
12 those payments or would DSC just automatically pull
13 them or both?

14 A. Both.

15 Q. Okay. And when you were authorizing
16 them, did you go through the same website,
17 discoverdsc.com?

18 A. I'm not positive. I believe Sharon Roach
19 did.

20 Q. Okay. And -- and the printout you
21 mentioned would come from that same site?

22 A. Yes.

23 Q. Okay. On the last page of that Exhibit
24 #3581, you see that page?

25 A. Uh-huh.

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1 Q. That -- that does not look like Mr.
2 Richardson's signature, right?

3 A. No.

4 Q. That looks like a DSC representative?

5 A. Right.

6 Q. Do you recall whether you saw this
7 checklist at the time or not?

8 A. I don't recall seeing this.

9 Q. Okay. It mentions in there -- you know,
10 in this checklist, it mentions preview,
11 discoverdsc.com website and the Unplugged with the
12 dealer. Do you see that?

13 MR. COMAN:

14 I'm sorry. Where --

15 MR. McCARTER:

16 On the checklist down at the bottom,
17 it says, preview discoverdsc.com website and
18 it goes on.

19 BY MR. McCARTER:

20 Q. Do you see that?

21 A. Okay.

22 Q. My question is just, do you remember Mr.
23 LaBauve or anybody else, you know, going through the
24 website with you?

25 A. Like navigating it?

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1 I'm going to show you a document
2 we're going to call Exhibit #7. And this is
3 the only copy I have of this one. So you guys
4 can look off each other.

5 BY MR. McCARTER:

6 Q. But I -- I will represent to you that
7 this is Exhibit B of your amended complaint and I
8 just -- I want to know have you seen this document
9 before?

10 A. Yes.

11 Q. What is this, I mean, what -- what does
12 it show?

13 A. This shows all of the DSC payoffs that we
14 made through our -- I believe this was the
15 transaction history of our bank account.

16 Q. Okay. So you think that that's a
17 printout from your bank account?

18 MR. COMAN:

19 Actually, let me -- let me stop. If
20 we can go off the record.

21 MR. McCARTER:

22 Yes.

23 (Discussion held off the record.)

24 MR. McCARTER:

25 Back on the record.

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1 BY MR. McCARTER:

2 Q. So, Mr. London, Exhibit #7, the second
3 page of that exhibit was a declaration by a former
4 plaintiff Young Executive in this case, and it's
5 just in there sort of by mistake, because it was in
6 my copy of the complaint. So the first page of
7 that, and then the third page and succeeding of
8 Exhibit #7 are Exhibit B of your complaint. And,
9 again, I think you were saying that this came from
10 your bank account?

11 A. I believe so, yes.

12 Q. Okay. And do you recall what it purports
13 to show?

14 A. It purports to show when payoffs were
15 made to DSC --

16 Q. Okay. And you had a way to sort --

17 A. -- on specific vehicle.

18 Q. Sorry for interrupting. So you had a way
19 to sort by payee?

20 A. No. I believe I had a way to sort by
21 description, DSC payoff.

22 Q. Okay. And just to be clear, though, this
23 would just show the actual amount paid to DSC, it
24 wouldn't necessarily show --

25 A. Actually, yes, transaction categories,

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1 DSC payoffs. So it shows me all of the DSC payoffs.

2 Q. Okay. But just to be clear, these show
3 actual ACH transfers to DSC, it doesn't really show
4 us what you borrowed on that unit, how much interest
5 or fees?

6 A. Correct.

7 Q. This is just the actual money that was
8 transferred to DSC on those dates?

9 A. On those dates, correct.

10 Q. Okay. All right. Mr. London, did you
11 have any understanding of what Mr. LaBauve's
12 responsibility was or what his role at DSC was?

13 A. His responsibility was to make sure --
14 MR. COMAN:

15 I'm sorry for interrupting. Let me
16 just lodge an objection -- to the extent that
17 you know, but let me just lodge an objection
18 to the form, but you can answer the question.

19 BY MR. McCARTER:

20 Q. And I'm asking about your working
21 understanding, not whether it was actually right or
22 wrong.

23 A. Okay.

24 Q. But how did you understand his role to
25 be?

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1 A. His role was to procure new dealers, to
2 monitor and maintain those dealers, and to keep
3 track of the ongoings of those dealers, to protect
4 DSC, and to procure profit for DSC.

5 Q. All right. Do you have a recollection of
6 how many cars you may have financed with DSC?

7 A. I believe it was 524.

8 Q. And, again, that's roughly from July 2011
9 to March 2013?

10 A. Correct.

11 Q. Okay. What happened to your recollection
12 in March of 2013 to bring that relationship to an
13 end?

14 A. What happened --

15 Q. What happened in March 2013 to bring Red
16 Barn's relationship with DSC to an end?

17 A. We had some financial difficulties and, I
18 mean, that's pretty much it.

19 Q. Okay. Did Red Barn give DSC checks that
20 didn't clear?

21 A. I don't think so.

22 Q. You don't think there were any NSF checks
23 involved?

24 MR. COMAN:

25 Objection as to form.

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1 THE WITNESS:

2 There may have been ACHs that
3 weren't paid, but I don't think there were any
4 actual checks.

5 BY MR. McCARTER:

6 Q. So you think there may have been payments
7 made to DSC that didn't clear?

8 MR. COMAN:

9 Objection to form.

10 THE WITNESS:

11 I don't know. I don't know.

12 BY MR. McCARTER:

13 Q. That's fine. I'll show you some records
14 in a minute. I'm trying to get what's your
15 recollection of how did financial difficulties
16 translate into an end of the relationship with DSC?

17 A. Well, financial difficulties translated
18 to an end with DSC, because we were working with
19 Stuart LaBauve to take care of the deficiencies. We
20 actually came up with a plan that was going to take
21 care of those deficiencies. Mr. Richardson
22 presented that plan to DSC and AFC, and AFC agreed
23 to it verbally. DSC was seeming to go along with it
24 verbally. And then the vehicles that we had stated
25 that we were going to go sell at First Choice

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1 Louisiana Auto Auction to give to -- to give the
2 funds to DSC and AFC were seized.

3 Q. And I think you said earlier they were
4 seized by First -- Louisiana First Choice and you
5 think on behalf of DSC?

6 A. I would say I know on behalf of DSC.

7 Q. You're talking about taking care of
8 deficiencies, though. It sounds like that there may
9 have been repossessions prior to that. Does that
10 ring a bell?

11 MR. COMAN:

12 Objection to form.

13 THE WITNESS:

14 I don't know if there were
15 repossessions prior to that.

16 BY MR. McCARTER:

17 Q. So how -- how -- do you have any
18 recollection of how deficiencies to DSC were created
19 in the first place?

20 A. What caused the problems -- are you
21 asking what caused the problems for us to have
22 deficiencies?

23 Q. Sure, yes.

24 A. Okay. We have a ongoing relationship
25 with Southwest Finance. Southwest Finance wanted to

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1 be our primary lender. We agreed to that and made
2 them our primary lender. And sometime in February,
3 we were informed by Southwest Finance that they had
4 accumulated all the paper that they wanted to
5 accumulate. They had grown the office to the amount
6 that they wanted to grow it to. And, therefore,
7 they did not want to finance as many vehicles as we
8 were providing them. So during tax time, this was
9 tax time, we had a whole bunch of deals that we
10 needed to get funded on that we were unable to get
11 funded on very rapidly that were sold that needed to
12 be paid off to DSC by the terms of the agreement.

13 Q. And so you were unable to make certain
14 payments to DSC that were required under the
15 agreement?

16 A. That is correct.

17 Q. Do you remember how many cars you were
18 unable to pay DSC for that were due?

19 A. I don't remember. I just know that there
20 was an outstanding balance.

21 Q. Okay. Did that lead to DSC recovering
22 cars from Red Barn?

23 A. That led to DSC taking all of our
24 inventory, yes.

25 Q. And you -- you do or don't remember

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1 particular payments coming back or balancing at the
2 time?

3 A. I don't remember payments balancing
4 unless they were initiated by DSC and we were
5 unaware of it.

6 Q. Okay. Do you recall Louisiana Used Motor
7 Vehicle Commission getting involved in -- in those
8 deals in any way?

9 A. Yes.

10 Q. And what was their involvement?

11 A. Their involvement was to secure titles on
12 the vehicles, which had a -- that were DSC's that we
13 had not paid off.

14 Q. And by securing titles, do you mean
15 secure titles from DSC for the retail customer?

16 A. No. They -- they were on the floorplan.

17 Q. I -- I guess I'm asking why -- why did
18 the Motor Vehicle Commission want titles from DSC?

19 MR. COMAN:

20 Objection to form. If you know.

21 THE WITNESS:

22 I believe I know. Okay. I believe
23 I know, but I'm not positive. I believe
24 there's a law in the state of Louisiana where
25 a third party or something cannot be harmed.

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1 So the titles had to be turned over pursuant
2 to Louisiana law to the customer.

3 BY MR. McCARTER:

4 Q. Just to confirm, from your perspective,
5 the Louisiana Used Motor Vehicle Commission was
6 trying to get titles from DSC to get to your retail
7 buyers?

8 MR. COMAN:

9 Objection to form.

10 THE WITNESS:

11 Yes.

12 BY MR. McCARTER:

13 Q. And do you have any knowledge of whether
14 DSC turned over titles for that purpose?

15 A. DSC did.

16 Q. And that was prior to any payment by Red
17 Barn for those units?

18 A. Yes.

19 Q. Do you remember the name of the agent or
20 inspector from the Louisiana Used Motor Vehicle
21 Commission that might have been involved?

22 A. His name was Ronnie Wisenor.

23 Q. Is he someone that you had known or
24 worked with before this incident?

25 A. Just on various complaints, if somebody

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1 lodged a complaint against us. We were regulated by
2 them. So he was required to look into it and make
3 sure. A lot of them were title absent complaints.

4 Q. What do you mean by that, what's a title
5 absent complaint?

6 A. Well, where we didn't have the title,
7 because we had paid off -- I can give you a bunch of
8 instances, where you had paid off -- we had paid off
9 the DSC and DSC did not have the title yet, but it
10 had gone past the 20 days that was allowed.

11 Q. Who -- who -- what -- who allowed the 20
12 days, what do you mean by 20 days?

13 A. You are required -- I -- I believe you're
14 required by Louisiana law, almost positive, 20 days
15 to get the title to the retail buyer in the event of
16 a sale.

17 Q. Okay.

18 A. Now, the -- the Louisiana Used Car
19 Commission has told me that they don't enforce that
20 law, because they understand the -- the problem of
21 getting titles from the auctions and floorplan
22 companies and things like that.

23 Q. Would -- would those typically have been
24 cars that were bought at auction without a title
25 present?

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1 A. Yes.

2 Q. Just ballpark, how often do you think you
3 heard from the Louisiana Used Motor Vehicle
4 Commission on a consumer complaint prior to March
5 2013?

6 A. Prior to the DSC involvement and prior to
7 everything else, probably five times, four times.

8 Q. Total?

9 A. Yes.

10 Q. Okay. Did you have a particular contact
11 at Southwest Finance?

12 A. Yes.

13 Q. Who was that?

14 A. Tara Brouillette.

15 Q. Okay. Do you have any sense of how many
16 titles DSC released to retail customers without
17 payment related to Red Barn?

18 A. I do not know the total number.

19 Q. Okay. All right. And I think you said
20 -- strike that.

21 Do you have any understanding of where
22 the cars recovered by DSC went to?

23 A. They went to Louisiana First Choice Auto
24 Auction.

25 Q. Okay. And is it your understanding that

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1 all of them went there?

2 A. Yes.

3 Q. And I understand there's some issue --
4 strike that.

5 Did all of those vehicles eventually get
6 sold by DSC through Louisiana First Choice Auto
7 Auction?

8 MR. COMAN:

9 Objection to form. If you know.

10 THE WITNESS:

11 Did all of those vehicles get sold
12 -- rephrase.

13 BY MR. McCARTER:

14 Q. Yes. I understand you had some issue
15 with how they were held and sold, but did they
16 eventually get resold and credited to Red Barn?

17 A. I believe there is still some that have
18 not been sold and have not been credited to Red
19 Barn.

20 Q. What's that belief based on?

21 A. That belief is based on a list that was
22 provided to me by, I think, Louisiana First Choice
23 Auto Auction listing 19 vehicles that were still in
24 their possession that we were supposed to sell or we
25 had finally agreed to sell after three years and all

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1 DSC payoff?

2 Do you see that?

3 A. Uh-huh.

4 Q. Okay. And then the first page looks
5 like, sort of, a summary of the totals on the
6 following pages; is that right?

7 A. That looks right.

8 Q. Okay. And is this something that you
9 created for use in the bankruptcy, or for some other
10 purpose?

11 A. I don't know what it was created for.

12 Q. Okay. But you did say, a minute ago, you
13 were involved in creating it, right?

14 A. Yes, correct.

15 Q. But you don't remember why?

16 A. I don't remember why.

17 Q. Okay. I want to show you what we are
18 going to call Exhibit #18. I don't -- this is Bates
19 labeled NG008087 through 88. I don't know -- is
20 this a document that you would have ever seen
21 before?

22 A. No.

23 Q. Okay. At the bottom --

24 MR. COMAN:

25 Objection to form.

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1 BY MR. McCARTER:

2 Q. -- it says, on May 7, 2013, there is
3 apparent e-mail. And it says, "I received a call
4 from the dealer, Don Richardson, and he would like a
5 detailed report of all activity on the account since
6 the default, and would like to know the remaining
7 balance on each unit sold at auction, as well as a
8 list of the units that have not yet sold."

9 Do you know -- do you remember whether
10 Red Barn asked for an account statement around this
11 time?

12 A. I don't remember. I didn't ask for an
13 account statement around that time.

14 Q. Okay. Do you recall getting or seeing
15 one from DSC that was used in the bankruptcy or for
16 some other purpose?

17 A. No.

18 Q. Okay. I am going if show you what we're
19 going to call Exhibit #19. For the record, this is
20 Bates labeled NG008120. This looks like it may be
21 an April 26, 2013 letter from Red Barn's bankruptcy
22 attorney to NextGear; is that right?

23 A. Yes.

24 Q. All right. And Arthur Vingiello --

25 A. That's to Louisiana First Choice Auto

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1 Auction.

2 Q. Correct. And so this was your bankruptcy
3 attorney at the time?

4 A. Yes.

5 Q. Okay. And he's representing that Red
6 Barn is a debtor in possession and that DSC should
7 cease from selling any collateral in its possession?

8 A. Yes.

9 Q. Okay. All right. I am going to show you
10 what we're going to call Exhibit #20. This is Bates
11 labeled NG008358 through 8359.

12 A. Okay.

13 Q. This looks like a series of e-mails
14 between you and personnel at NextGear Capital
15 regarding two vehicles that may have been on your
16 DSC floorplan; is that right?

17 A. Uh-huh.

18 Q. Okay. Can you just describe for me what
19 appears to be happening here?

20 A. It appears to be that we have possession
21 of two vehicles that were not returned to DSC, and
22 we are trying to get those back in your possession.

23 Q. Okay. And the advice was to consult your
24 attorney -- or the response was to consult your
25 attorney?

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1 A. I don't recall that.

2 Q. I mean, do you see, at the top, it says,
3 "Devon, you will need to consult your attorney"?

4 A. Oh, okay.

5 Q. And that e-mail address for you, it looks
6 like wwwdevo@aol.com.

7 A. Yes.

8 Q. Is that your e-mail address?

9 A. Yes, it is.

10 Q. And so this was going on a couple of
11 months after that letter from your attorney, that we
12 just looked at, Exhibit #19?

13 A. Uh-huh.

14 Q. And so that -- the bankruptcy would have
15 been pending at that time?

16 A. Yes.

17 Q. Okay. All right. I'm going to call this
18 Exhibit #21.

19 A. Okay.

20 Q. This document is Bates labeled RB0075.
21 It looks like another, you know, exhibit from the
22 bankruptcy that you may have produced to us.

23 Does that look right to you?

24 A. Yes.

25 Q. Okay. And it's a list of insider

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1 transactions, the past year, for Red Barn Motors,
2 Inc.

3 Do you see that?

4 A. Uh-huh.

5 Q. All right. And, among others -- like,
6 the first line item is "Devon house payment."

7 A. Uh-huh.

8 Q. 1750. You see that?

9 A. Uh-huh.

10 Q. So was Red Barn Motors paying your house
11 payment?

12 A. No. That house is actually owned by Don
13 and Barbara Richardson.

14 Q. So was Red Barn Motors paying Don and
15 Barbara's house payment?

16 MR. COMAN:

17 Objection to form.

18 THE WITNESS:

19 Let me see. It would appear, based
20 on this, it was.

21 BY MR. McCARTER:

22 Q. Okay. And there are several others,
23 below, that say "Devon house payment." And in the
24 same case, those are all that same house owned by
25 Don and Barbara?

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1 A. Uh-huh.

2 Q. Where is that house located? What's the
3 address?

4 A. 25852 Plantation Avenue.

5 Q. Is that still owned by the Richardsons?

6 A. Yes, it is.

7 Q. Okay. And then the second entry, for
8 example, says "payment on car financing, BHPH loan."

9 Do you know anything about what that was
10 for?

11 A. Payment on car financing, BHPH loan.

12 I don't.

13 Q. Okay. You don't have any knowledge of
14 why that would be listed as an insider transaction
15 here?

16 MR. COMAN:

17 Objection to form.

18 Obviously, to the extent that you
19 know --

20 THE WITNESS:

21 I don't know.

22 BY MR. McCARTER:

23 Q. Do you recall whether you or either the
24 Richardsons had any personal car loan that was being
25 serviced by Red Barn Motors, Inc.?

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1 A. Neither me nor the Richardsons had a car
2 loan being serviced by Red Barn Motors.

3 Q. Okay.

4 A. I was provided a vehicle to drive.

5 Q. By Red Barn Motors?

6 A. By Red Barn Motors. But it was an
7 inventory vehicle.

8 Q. Okay. Did you guys ever drive DSC
9 vehicles?

10 A. I would occasionally drive them, to make
11 sure that there weren't any problems with them. And
12 I would switch off on a daily basis. But my primary
13 vehicle was not a DSC vehicle.

14 Q. Would you ever have a DSC vehicle parked
15 at your house overnight?

16 A. That's possible.

17 Q. The -- on down, there is a -- it mentions
18 "repay part of the Cliff Richardson loan."

19 Do you know anything about that?

20 A. I know that Cliff had loaned some money
21 to Red Barn Motors.

22 Q. And who is Cliff?

23 A. Cliff is Don's son.

24 Q. And where -- on down, where it says
25 "Pelican Advisory Group loan to RBM," that's Don's

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1 son's insurance company?

2 A. That's correct.

3 Q. Okay. I'm going to show you what we're
4 going to call Exhibit #22. And I will just
5 represent to you these are just pages that we
6 printed recently from the website redbarnmotors.net.

7 Does this look like Red Barn Motors'
8 website?

9 A. Yes, it does.

10 Q. What's going with this pig? Is that
11 you all's mascot?

12 A. Yes.

13 Q. Is it -- do you own the pig?

14 A. No. It's a Photoshop.

15 Q. Gotcha.

16 MR. McCARTER:

17 All right. Can we take a short
18 break?

19 (Recess taken.)

20 MR. McCARTER:

21 Back on the record.

22 BY MR. McCARTER:

23 Q. So, Mr. London, one of the things we
24 talked about before was the KO book and at the time,
25 you said you don't know who maintains and organizes

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1 the KO book; is that right?

2 A. Correct.

3 Q. Okay. Have you made any inquiry of
4 anyone about how to get out of the KO book?

5 A. No.

6 Q. Okay. The auctions where you cannot
7 write business checks, and I'm sorry please
8 remember, were Long Beach and Baton Rouge -- ABC
9 Baton Rouge?

10 A. Long Beach and Oak View Auto Auction.

11 Q. Oak View Auto Auction. Okay. And --

12 A. And we were barred from Manheim auctions.

13 Q. Okay. Have you inquired with Manheim how
14 to get reinstated with Manheim?

15 A. We would have to payoff DSC.

16 Q. How do you know that?

17 A. That's what they told me.

18 Q. Who is they?

19 A. The manager that I spoke to on the phone.

20 Q. Who was that, what --

21 A. I don't know.

22 Q. Was it a particular auction?

23 A. It was Manheim New Orleans.

24 Q. Was it GM or somebody else?

25 A. Somebody else.

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1 Q. When was that conversation?

2 A. That conversation was probably somewhere
3 around the time of us finding out we were in the KO
4 book, because I had tried to attend the auction and
5 they would not let us enter. So then I called TRA,
6 which is Manheim Lafayette, and they said the same
7 thing.

8 Q. And -- so you said it was around the time
9 you found out you were in the KO book, but when --
10 when was that, what year was that?

11 A. That was right after -- I believe it was
12 2013.

13 Q. Okay. During the time of bankruptcy?

14 A. Probably later on in the bankruptcy.

15 Q. Have you made any inquiry Manheim since
16 then on how to get back in?

17 A. No.

18 Q. At Oak View Auto Auction, have you made
19 any inquiry about what it would take for them to
20 accept your business checks?

21 A. I have and they refused. I've done it on
22 multiple occasions.

23 Q. Have you offered to provide any security
24 or collateral to them?

25 A. I have not.

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1 waive the \$1,000 deposit that we were required to --
2 up front at each auction and he refused to do that.

3 Q. And so that was 2013?

4 A. That was 2000 -- that was -- that was
5 2015.

6 Q. Have you had any conversations with Long
7 Beach Auto Auction since that conversation in 2015
8 about writing business checks?

9 A. No.

10 Q. What exactly did Long Beach Auto Auction
11 say to you about the KO book?

12 A. Again, that we were in the KO book. I
13 mean --

14 Q. Anything more about the KO book or how it
15 works?

16 A. No.

17 Q. How about ABC Baton Rouge, have you had
18 any conversations with them about writing checks?

19 A. Yes.

20 Q. When was that?

21 A. I don't know the exact date.

22 Q. Was it closer to the bankruptcy in 2013
23 or more recent?

24 A. It was more recent than that. I don't
25 think they were established back then, but it was --

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1 I don't want to guess.

2 Q. Do you think it was this year?

3 A. It wasn't this year. It would have -- it
4 would have been possibly 2015.

5 Q. Okay. And what exactly did ABC Baton
6 Rouge say about writing checks?

7 A. ABC Baton Rouge allowed us to write
8 checks up to a certain amount.

9 Q. Up to how much?

10 A. It's a \$12,000 figure.

11 Q. Is that per car or total for the day?

12 A. No, total for the day.

13 Q. Was there any discussion with ABC Baton
14 Rouge about the KO book, specifically?

15 A. No.

16 Q. I apologize if we covered this, but have
17 -- have you applied for any form of floorplan
18 financing since the bankruptcy?

19 A. No.

20 Q. All right. You -- you mentioned earlier
21 that you had a concern about DSC charging interest
22 on floorplanned vehicles before DSC received the
23 title; is that correct?

24 A. Before DSC paid for the vehicle.

25 Q. And I think you had some understanding

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1 that typically happens when the title comes in to
2 the auction?

3 A. Correct.

4 MR. McCARTER:

5 I'm going to show you what I'm going
6 to call Exhibit #23.

7 MR. COMAN:

8 Thank you.

9 BY MR. McCARTER:

10 Q. I'll represent to you that this is Red
11 Barn Motors' responses to NextGear Capital's first
12 set of interrogatories in this case. I believe we
13 just got a verification in yesterday; is that right?

14 MR. COMAN:

15 That's correct.

16 MR. McCARTER:

17 Okay. So that will shorten this.

18 BY MR. McCARTER:

19 Q. This suggests that you were involved in
20 responding to these interrogatories; is that
21 correct?

22 A. Yes.

23 Q. Okay. And in a couple of different
24 places, it says that you, Donald Richardson, and
25 Sharon Roach would be the Red Barn personnel that

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1 would have interacted with DSC and have knowledge of
2 the DSC floorplan. Does that sound right?

3 A. It does.

4 Q. Okay. Is there anybody else you think of
5 at the dealership that has specific knowledge of the
6 DSC floorplan?

7 A. No.

8 Q. Can I turn your attention to
9 interrogatory response #6? In the middle of the
10 Page 6, so there's an objection, and then it says,
11 "Subject to the foregoing specific and general
12 objection, Red Barns responds that during its
13 communications with NextGear and DSC to include
14 account executive Stuart LaBauve, NextGear and DSC
15 concealed from Red Barn that interest or fees would
16 be charged before money was actually lent under the
17 Floorplan Agreement."

18 Do you see that?

19 A. Yes.

20 Q. Okay. So that's -- that's saying that it
21 was hidden, but was there any specific discussion of
22 that issue with Stuart at the time you first entered
23 into the agreement with DSC?

24 A. At the time that we first entered into
25 the agreement with DSC, that was not brought up. It

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1 was assumed -- it was assumed that, you know, based
2 on the agreement and the term advance and, you know,
3 when payment is made, you know, that it would have
4 been when the money was actually lent.

5 Q. Okay. Going on down in that same answer,
6 Red Barn has said, "Eventually, Devon London
7 confronted Stuart LaBauve following Devon London's
8 suspicion that defendants were, in fact, charging
9 interest and fees on money not actually lent. In
10 turn, Stuart LaBauve admitted that the defendants
11 were charging interest and fees on money not
12 actually lent."

13 Do you see that?

14 A. Yes.

15 Q. When did that conversation occur?

16 A. That occurred on or about -- it was when
17 I found out that they were back dating the interest
18 charged to the date of the auction versus the date
19 that I actually floorplanned the vehicle, and I
20 confronted him and said, you know, why are we being
21 charged interest when I haven't even chosen the
22 floorplan. And he said, I'll have to get back with
23 you. And he got back with me and basically said,
24 that's the way that it is, you know. They -- they
25 charge interest from the date of the sale versus the

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1 date of the actual loan.

2 Q. Okay. What time frame -- I mean, when
3 did that actually happen?

4 A. I believe that it was June -- June or
5 July of 2012 is when I figured that out, mid 2012.

6 Q. And that seems to be consistent with
7 paragraph 45 of your -- of your complaint where you
8 -- you said -- and I'll just read it to you. It
9 says, "First met in or about June of 2012. Devon
10 London, Red Barn's general manager, discovered
11 transactions in which Red Barn had not actually
12 chosen to use the Floorplan Agreement such as
13 NextGear. And DSC had never actually loaned money
14 to Red Barn for the purchase of vehicles. It goes
15 on, but that -- that seems to be the time frame,
16 June of 2012?

17 A. Yes.

18 Q. Okay. And we responded back to you along
19 the lines that --

20 A. That's the way that it is.

21 Q. Okay. And your line stayed opened, you
22 continued to borrow from DSC until March of 2013?

23 A. That is correct.

24 Q. And were -- were there any other
25 witnesses to that conversation with Mr. LaBauve?

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1 A. No.

2 Q. Okay. Have you ever been part of a
3 discussion between DSC and any other dealer besides
4 Red Barn about the timing of DSC's interest charges?

5 A. Have I ever been in --

6 Q. A discussion between DSC and any other
7 dealer besides Red Barn about how DSC calculates
8 interest or when it starts to accrue?

9 A. I have.

10 Q. Who was that?

11 A. Dewitt Hall.

12 Q. You told me earlier. Is it Hall or Hull?

13 A. Hall, H-A-L-L.

14 Q. Okay. And what's -- what's his
15 dealership's name?

16 A. I don't know.

17 Q. And who was the DSC representative or
18 representatives?

19 A. For him?

20 Q. Well, you -- you said you were -- you
21 witnessed a discussion between DSC and him about
22 interest?

23 A. Oh, no, no. I -- I said I had a
24 conversation with him.

25 Q. Okay.



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1 A. I didn't witness a conversation between
2 him and --

3 Q. Okay. So you talked -- I'm sorry. You
4 talked about it with Dewitt, but you haven't
5 actually witnessed a conversation --

6 A. No.

7 Q. -- between DSC and Dewitt about interest?

8 A. No.

9 Q. Have you witnessed any conversation or
10 e-mails or other communication between DSC and any
11 third-party dealership besides Red Barn about
12 interest charges and how they're calculated?

13 A. Rephrase the question.

14 Q. Okay. Have you witnessed personally,
15 either you were -- you were there or you heard it or
16 you saw it, communications between DSC and some
17 dealer other than Red Barn about how DSC charged and
18 calculated interest?

19 A. No.

20 Q. Okay. And these conversations between
21 you and -- or this conversation that's mentioned in
22 interrogatory #6, was any of that in writing?

23 A. No.

24 Q. Where did the conversation take place?

25 A. At Oak View Auto Auction.



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1 Q. And you said he -- he got back with you.
2 Did he get back with you the same day or same place?

3 A. No. He got back to me the following week
4 I questioned him about it, again.

5 Q. Did you escalate your concern to anybody
6 else at DSC?

7 A. No.

8 Q. You had conversations with Dewitt Hall
9 about this issue. What -- when did those take
10 place?

11 A. Those took place probably around 2014.

12 Q. Okay. And where did they take place?

13 A. At Red Barn Motors.

14 Q. All right. And who raised the subject,
15 you or him?

16 A. I believe -- I believe he did.

17 Q. Okay. And what was the substance of
18 those discussions?

19 MR. COMAN:

20 I'm going to object. Is there a
21 particular item number in this deposition
22 topic that addresses Dewitt Hall?

23 MR. McCARTER:

24 I'm sure there is one that addresses
25 Red Barn Motors' concern with DSC's interest

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1 charges. So if they made statements to any
2 party about those, that's certainly well
3 within the scope.

4 MR. COMAN:

5 Just give me a number.

6 MR. McCARTER:

7 Go to #2 just to start there.

8 MR. COMAN:

9 That's fine.

10 BY MR. McCARTER:

11 Q. So back to the question, what was the
12 substance of your discussions with Mr. Hall about
13 DSC's interest charges?

14 A. Basically, just that they were charging
15 interest on money that was never lent. I mean,
16 that's the gist of it.

17 Q. Did you raise that to him or did he raise
18 it to you?

19 A. I think it was mutual. It was a mutual
20 discussion.

21 Q. Okay. And what did he say related to
22 that?

23 A. I don't remember.

24 Q. Okay. And do you recall whether he
25 mentioned ever raising it to DSC or addressing it

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1 with DSC?

2 A. I don't.

3 Q. You don't know one way or the other?

4 A. I don't know one way or the other.

5 Q. Okay. Do you recall high level what Red
6 Barn Motors' net income was prior to the time of
7 bankruptcy in 2013?

8 A. I would not know that.

9 Q. Who would know that?

10 A. Don Richardson and the accountant.

11 Q. Do you know what Red Barn Motors' net
12 income is now as of 2016?

13 A. It is substantially lower. I, again,
14 don't have the exact figure.

15 Q. And you don't know what it was pre-2013,
16 but you know it's lower now?

17 A. I know it's lower now, yes.

18 Q. And you said substantially. How -- how
19 much lower?

20 A. I don't want to just guess. I just know
21 that we're selling less cars.

22 Q. Okay. Well, damages is certainly a topic
23 in -- in the notice. Are you -- are you prepared at
24 all to talk about what Red Barn's damages are in
25 this case?

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1 A. I assume I should -- I would be.

2 Q. Okay. Do you have some understanding you
3 have a claim for the harm to your business allegedly
4 caused by DSC?

5 A. Yes.

6 Q. Okay. How -- how would you quantify that
7 harm?

8 A. How would I quantify that harm? I would
9 quantify that harm by the charging of interest over
10 a period of time and curtailment fees on money that
11 was never lent. There were many cases, in fact,
12 that not only was there money never lent, but we had
13 paid off the vehicle to DSC and had to wait for the
14 title to come in. So there was never a transaction
15 whatsoever for the money for -- for a floorplan
16 agreement and DSC was holding the money for the --
17 what they should have paid for the floorplan and the
18 amount that they collected from us including
19 interest and fees. We -- I mean, that happened many
20 occasions.

21 Q. Okay.

22 A. And --

23 Q. I'm sorry. Go ahead.

24 A. -- we were damaged, because it limited
25 our capital. As I said, we're a small mom-and-pop

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1 Q. Whom?

2 A. Jason Helmke was one of them.

3 Q. Do you know the dealership's name?

4 A. ABC Auto Sales.

5 Q. Is he in this area?

6 A. He's in Baton Rouge.

7 Q. Anybody else?

8 A. He's on Plank Road. I mean, I have had
9 conversations. I don't -- I don't remember, just
10 with various dealers of, you know, the extent of
11 what's happening between DSC and the dealer.

12 Q. Okay. Do you remember any other names?

13 A. I don't.

14 Q. Okay. When did you speak to Mr. Helmke
15 about it?

16 A. Probably within the last six months.

17 Q. So are you suggesting to these other
18 dealers that NextGear improperly charges interest?

19 MR. COMAN:

20 Objection to form.

21 THE WITNESS:

22 I am not -- I am not suggesting.
23 I'm telling them what happened to us and
24 explaining that -- I mean, I have told them
25 that there's loans that have never been made.

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1 BY MR. McCARTER:

2 Q. Do these other dealers, including Mr.
3 Helmke, have NextGear loans, to your knowledge?

4 A. I don't know.

5 Q. Are you trying to recruit them to be
6 parties in this case?

7 MR. COMAN:

8 Objection to form.

9 THE WITNESS:

10 Am I personally trying to recruit
11 them?

12 BY MR. McCARTER:

13 Q. Right.

14 A. I believe Dewitt Hall was --

15 MR. COMAN:

16 Let me stop you there. I'm
17 instructing you not to answer any question
18 that involves any communication between a
19 counsel and you. If you had a conversation on
20 your own with Dewitt Hall that was outside of
21 this litigation, that's fair game.

22 THE WITNESS:

23 What was the question again?

24 BY MR. McCARTER:

25 Q. Are you trying to recruit Mr. Hall, Mr.

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1 Helmke, or any dealer to be a party in this case?

2 A. No.

3 Q. Have you done that?

4 A. No.

5 Q. Okay. What interest do you think they
6 would have in how DSC charged you interest and why
7 are you raising that to them?

8 MR. COMAN:

9 Objection. If you know.

10 THE WITNESS:

11 Because I feel it is unfair what DSC
12 and NextGear is doing and I want -- I don't
13 want them to continue the practice of
14 defrauding used car dealers. And I believe
15 the conversation came up with Mr. Helmke,
16 because he was having a problem with DSC.

17 BY MR. McCARTER:

18 Q. And you said that was about six months
19 ago. So it would be NextGear at that point?

20 A. Correct.

21 Q. And -- and just to be clear, Red Barn
22 Motors has not signed any loan agreements or any
23 agreements with DSC since filing its bankruptcy?

24 A. Has not signed any loan agreements?

25 Q. Have you -- has Red Barn Motors signed

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1 any agreement with DSC or NextGear since it filed
2 its bankruptcy in June of 2013?

3 MR. COMAN:

4 Objection to form.

5 THE WITNESS:

6 I don't think we've entered into any
7 agreements since the filing of the bankruptcy.

8 BY MR. McCARTER:

9 Q. With DSC or NextGear?

10 A. Correct.

11 Q. Okay. Do you have an understanding --
12 you've alleged a RICO conspiracy between the
13 defendants in this case?

14 A. Yes.

15 Q. Okay. What's your understanding of how
16 the conspiracy worked?

17 MR. COMAN:

18 I'm going to object to form.

19 THE WITNESS:

20 I would have to refer back to
21 counsel -- my counsel, because I -- I don't
22 know all the laws of RICO. So I would be
23 unable to properly answer that question.

24 BY MR. McCARTER:

25 Q. And I'm not asking you about RICO or a

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1 legal opinion, but you've suggested that -- you've
2 alleged that there's some sort of conspiracy between
3 the defendant and --

4 A. Correct.

5 Q. So actually how do you believe that
6 conspiracy worked?

7 A. The conspiracy worked --

8 MR. COMAN:

9 I'm going to object to form again.

10 THE WITNESS:

11 Basically, they all knew what they
12 were doing. They all knew that they were
13 together not providing a service or not
14 providing financing on vehicles that they were
15 charging interest on. They were all aware of
16 that. They conspired together to defraud used
17 car dealers of interest and fees by charging
18 interest when money was never lent and by
19 charging curtailment fees when money was never
20 lent.

21 BY MR. McCARTER:

22 Q. Okay. What specifically was Cox
23 Enterprises' role in that?

24 MR. COMAN:

25 Objection to form.

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1 THE WITNESS:

2 Can he repeat it?

3 MR. COMAN:

4 You can ask him to.

5 THE WITNESS:

6 Can you restate it, please?

7 BY MR. McCARTER:

8 Q. You just described how you believe they
9 were all part of a conspiracy, because they were all
10 aware and I'm asking you, do you have any factual
11 knowledge of Cox Enterprises' specific role in the
12 conspiracy you're alleging?

13 A. It has been going on for a very, very
14 long time. So I believe that they had knowledge of
15 how their business operates and how they collect
16 interest and how they charge their customers when
17 they collect fees and when they collect interest.

18 Q. Okay. Were you -- were you personally,
19 Red Barn Motors, a party to or a witness of any --
20 into any conversations with Cox Enterprises or
21 anybody at Cox Enterprises about these interest
22 issues?

23 MR. COMAN:

24 Objection. Answer if you know.

25 THE WITNESS:



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1 I don't know, no.

2 BY MR. McCARTER:

3 Q. So you were not a witness to those?

4 A. No.

5 Q. Okay. Were you, Red Barn Motors, a
6 witness to or a party to any conversations with Cox
7 Automotive, Inc., about these interest issues?

8 A. Cox Automotive, Inc., is owned by Manheim
9 or Manheim is owned by Cox Automotive, Inc. And
10 NextGear is owned by Cox Automotive, Inc. So
11 communications between those two entities would also
12 be dealing with that company.

13 Q. Okay. I asked you whether you were a
14 party to or a witness to any conversations with Cox
15 Automotive, Inc., itself, about these interest
16 issues you're alleging?

17 A. No.

18 Q. Okay. Were you, Red Barn Motors, a party
19 to or a witness to any conversations with John Wick,
20 who's a defendant in this case, about these interest
21 issues?

22 A. Was I party to any conversation?

23 Q. Or a witness in conversation or
24 communication --

25 A. No.



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1 Q. -- with John Wick?

2 A. No.

3 Q. What benefit did you, Red Barn, confer on
4 Cox Enterprises, specifically?

5 MR. COMAN:

6 Objection to form.

7 THE WITNESS:

8 Well, what do you mean by that?

9 BY MR. McCARTER:

10 Q. You've got an unjust enrichment claim in
11 this case. And so I understand you are saying you
12 paid interest to NextGear Capital, Inc., that you
13 don't think it was due. Did you pay any money to
14 Cox Enterprises, Inc., specifically?

15 MR. COMAN:

16 Objection to form.

17 THE WITNESS:

18 No.

19 BY MR. McCARTER:

20 Q. Did Red Barn Motors pay any money to Cox
21 Automotive, Inc., specifically?

22 MR. COMAN:

23 Objection to form.

24 THE WITNESS:

25 Indirectly.

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1 BY MR. McCARTER:

2 Q. What does that mean?

3 A. If it's being paid to NextGear or DSC,
4 then it's being paid to Cox Automotive.

5 Q. Okay. Do you remember ever writing a
6 check or transferring an ACH directly into an
7 account with the name of Cox Automotive, Inc.?

8 A. No.

9 Q. Okay. Do you recall paying John Wick
10 personally any money from Red Barn Motor's account?

11 A. No.

12 Q. Other than the involvement of the
13 Louisiana Used Motor Vehicle Commission and sorting
14 out the title issues in this case, has Red Barn ever
15 been investigated or looked into by any state
16 agency, to your knowledge?

17 MR. COMAN:

18 Objection to form. Answer if you
19 know.

20 THE WITNESS:

21 There was a complaint filed and I --
22 I'm not sure if it was the Attorney General,
23 but they came in and investigated a complaint
24 of a woman who said that she was renting a
25 vehicle and never purchased a vehicle and was

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1 asking for her money back, and we had the
2 whole transaction on video. So they watched
3 the video and it was put to bed.

4 BY MR. McCARTER:

5 Q. Do you recall the timing of that?

6 A. Probably sometime in 2000 -- I don't.

7 I'm not going to guess.

8 Q. Do you recall her name?

9 A. I don't.

10 Q. Any other investigations by any federal,
11 state or local agency that you can think of?

12 A. No.

13 Q. What did you do to prepare for the
14 deposition today?

15 MR. COMAN:

16 I'm going to object to the extent
17 that it invades attorney-client privilege, but
18 past that --

19 BY MR. McCARTER:

20 Q. I'm not asking you to describe any
21 discussions with your attorneys. I'm asking you to
22 tell me what you did to prepare for the deposition
23 today and if that includes meeting with them, then
24 you need to tell me that, but don't tell me the
25 substance of it.

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1 A. Okay. I did meet with them.

2 Q. And when was this?

3 A. On Friday and I re-read the topics that
4 you were going to be going over and the amended
5 complaint.

6 Q. Okay. And did you talk to anybody else
7 besides your attorneys about those issues?

8 A. No.

9 Q. Quickly again before -- we talked about
10 some of your retail financing deals when you would
11 send, you know, papers to the bank for approval. Do
12 you recall that?

13 A. Uh-huh.

14 Q. When you would do that, is there -- does
15 it -- how long does it usually take the bank to
16 approve the financing?

17 A. Like, when we submit a loan, just fax it
18 over?

19 Q. Yes.

20 A. Sometimes, you can get an answer the same
21 day.

22 Q. And when did you get funding typically
23 from the bank?

24 A. When you -- when they received the title.

25 Q. Which is when? I mean, is it always at

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1 Q. Do you know what the nature of that claim
2 was?

3 A. Those were loans that -- basically, what
4 they did, and the claim was -- was much smaller than
5 that. That was an estimated amount based on what
6 the total claim could have been, but that was a
7 claim against defaults on loans, which Red Barn had
8 personally guaranteed.

9 Q. When you say "personally guaranteed," do
10 you mean they had recourse to Red Barn if they
11 didn't collect on their retail --

12 A. Correct.

13 Q. Okay. Do you know whether Mr.
14 Richardson, himself, personally guaranteed that
15 loan?

16 A. He -- Mr. Richardson personally gave
17 permission to personally guaranty them.

18 Q. So he gave permission for Red Barn to
19 guaranty them?

20 A. Yes.

21 Q. Okay. And just generally, on Schedule --
22 let's see, Schedule D -- this starts at Page 8.
23 Then, there's a Schedule E, and then there's a
24 Schedule F, and these -- those all show different
25 types of credit if you had claims against Red Barn

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1 at the time of the bankruptcy.

2 Do you see that?

3 MR. COMAN:

4 It's multiple pages so I object to
5 form, but if can answer whatever question he's
6 got.

7 MR. McCARTER:

8 Well, we can go through them one by
9 one. I'm trying to knock it out.

10 BY MR. McCARTER:

11 Q. So between pages 8 and page 19 of Exhibit
12 #16, there's basically a list of a whole bunch of
13 creditors to Red Barn.

14 Do you see that?

15 A. Uh-huh.

16 Q. Okay. Do you know one way or the other
17 whether Red Barn was current with every one of those
18 creditors except DSC at the time this bankruptcy was
19 filed?

20 MR. COMAN:

21 I'll object to the form again.

22 THE WITNESS:

23 No, we are not current with all of
24 them.

25 BY MR. McCARTER:



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1 Q. You're weren't current with AFC either,
2 right, at the time the bankruptcy was filed?

3 A. No.

4 Q. Okay. Are there any other significant
5 creditors that you can recall that you weren't
6 current with at the time?

7 MR. COMAN:

8 Objection to form.

9 THE WITNESS:

10 I wouldn't know off the top of my
11 head.

12 BY MR. McCARTER:

13 Q. Okay. But there are several on these
14 pages that you were not current with?

15 A. Yes.

16 MR. McCARTER:

17 All right. Guys, I need five
18 minutes and I'll be able to rap it up.

19 MR. COMAN:

20 Sure.

21 MR. McCARTER:

22 Okay. Off the record.

23 (Recesses taken.)

24 MR. McCARTER:

25 All right. Ready?

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1 MR. COMAN:

2 Yes, sir.

3 MR. McCARTER:

4 This won't take long. Back on the
5 record.

6 BY MR. McCARTER:

7 Q. Mr. London, we've talked before about
8 sort of the net income and business before
9 bankruptcy and after bankruptcy. Do you remember
10 that?

11 A. Uh-huh.

12 Q. So prior to bankruptcy, how did the
13 business compare from 2010 to 2011?

14 A. From 2010 to 2011, there was growth.

15 Q. Okay. And is that because you started up
16 in 2010 and you were just expanding operations?

17 A. Pretty much. I mean, in 2011 is when we
18 really started operating, you know, and running it
19 like a car dealership.

20 Q. Yes. And you got into credit
21 arrangements with both AFC and DSC in 2011?

22 A. Was it 2011?

23 Q. I think so.

24 A. Yes, okay.

25 Q. Okay. And did that credit allow you to

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1 acquire more inventory and make more profit?

2 A. Yes. It allowed us to generate more
3 inventory.

4 Q. Okay. And then from 2011 to 2012, was
5 the business still growing, shrinking, do you
6 recall?

7 A. It was growing.

8 Q. Okay. And then 2012 to 2013, was it --
9 was it growing in 2013 before the NextGear default?

10 A. It was always on an upward swing.

11 Q. Okay. You testified earlier, though, and
12 it's in your answer as well, but in 2013 -- I'm
13 sorry, not your answer, in your complaint, that in
14 2013, Red Barn ran into financial difficulties --

15 A. Uh-huh.

16 Q. -- is that right?

17 A. Correct.

18 Q. And you described those as being mostly
19 caused by the issue of Southwest Finance, right?

20 A. Well, it was not largely caused by the
21 issue with Southwest Finance. That was an issue.
22 It was largely caused by this scheme that siphoned a
23 whole bunch of money off of the business.

24 Q. Okay. Prior to DSC, you know, claiming
25 default and picking up its cars in March of 2013,

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1 were you having any other financial difficulties,
2 were there any other creditors you were having
3 trouble paying?

4 A. It all happened at once. It all happened
5 at once.

6 Q. Okay. But at some point prior to DSC
7 picking up cars, Southwest Finance informed you that
8 they weren't going to buy as much paper as you
9 thought they were going to buy?

10 A. That is correct.

11 Q. Okay. And were there any other creditors
12 that you can recall Red Barn defaulting to prior to
13 the middle of March 2013?

14 A. No. I believe we were current with
15 everybody.

16 Q. Okay.

17 MR. McCARTER:

18 Okay. No further questions, thank
19 you.

20 EXAMINATION

21 BY MR. COMAN:

22 Q. Mr. London, I just have a few. At the
23 beginning of your relationship with DSC -- and I say
24 your relationship, I should rephrase.

25 Red Barn -- Red Barn's relationship with

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1 Dealer Services Corporation, did DSC, through
2 contracts or through representatives represent to
3 you that they would only charge you interest and
4 curtailment fees beginning from the date of advance?

5 MR. McCARTER:

6 Object to form.

7 BY MR. COMAN:

8 Q. You can answer.

9 MR. McCARTER:

10 Object. Asked and answered. Go
11 ahead.

12 THE WITNESS:

13 Yes.

14 BY MR. COMAN:

15 Q. Okay. Did DSC conceal that fact from Red
16 Barn?

17 A. Yes.

18 MR. McCARTER:

19 Object to form.

20 BY MR. COMAN:

21 Q. Let me rephrase it. I'm sorry.

22 Did Red Barn conceal the fact that it
23 was, in fact -- did DSC conceal from Red Barn that
24 it was, in fact -- DSC was hiding and actually
25 charging interest and curtailment fees to you

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1 without your knowledge?

2 MR. McCARTER:

3 Object to form. These are all
4 leading and full of false assumptions.

5 BY MR. COMAN:

6 Q. You can answer.

7 A. Yes.

8 Q. Did that damage Red Barn or did Southwest
9 damage Red Barn?

10 MR. McCARTER:

11 Object to form.

12 THE WITNESS:

13 The damage to Red Barn was caused by
14 DSC.

15 BY MR. COMAN:

16 Q. Earlier, you testified under counsel's
17 questions regarding Stuart LaBauve and an
18 interaction you had with him, without the quote, you
19 were somewhere midstream, let's say, in the
20 relationship between Red Barn and DSC. Do you
21 recall that testimony?

22 A. Yes.

23 Q. Okay. And describe for us the
24 interaction that you had and the confrontation,
25 quote/unquote, that you had with Stuart LaBauve and

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1 what you learned at that date?

2 MR. McCARTER:

3 Objection, asked and answered in
4 detail.

5 BY MR. COMAN:

6 Q. You can answer.

7 A. I basically learned at that date that DSC
8 was charging interest from the date of the advance
9 -- from the date of the -- from the date of the
10 auction versus the date that we actually
11 floorplanned the vehicle through the auction.

12 Q. And what was your understanding at that
13 time from Stuart LaBauve as to that difference in
14 time between those two?

15 MR. McCARTER:

16 Object to form.

17 THE WITNESS:

18 That was just the way that it was.

19 He said that -- that's the way it was. They
20 always go from the date of the sale.

21 BY MR. COMAN:

22 Q. Okay. And did your knowledge and
23 understanding of this process evolve from that
24 moment to the end of the relationship, let's say, in
25 March of 2013?

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1 A. Yes, it did.

2 Q. Okay. Tell us how.

3 A. Well, we had the conversation with Stuart
4 and under the assumption it was three to four days
5 or however many days it was, we chose to continue
6 the relationship and just not cause any problems,
7 but --

8 Q. Let me stop you there.

9 MR. McCARTER:

10 No. Let him answer the question.
11 He's answering the question and you stopped
12 him in the middle of his answer. Go ahead and
13 answer.

14 THE WITNESS:

15 Okay. Then, it really came to light
16 with the Ford 500 in 2013 where we had paid
17 off the vehicle. We had paid all of the
18 curtailment fees. We had paid all of the
19 interest. We had paid everything to DSC and
20 DSC was the one that reimbursed us for the
21 money that we paid, because they had never
22 paid the auction for the car. So if the
23 auction had never gotten paid for the car, DSC
24 utilized all of our funds for the time since
25 they were collected without ever making a loan

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1 on the vehicle. Then, I started thinking
2 about all of the times that we had actually
3 paid off a car before DSC had the title and
4 how many times this actually happened, and it
5 was voluminous. It was not one time. It
6 wasn't two times. It was many times that we
7 paid off DSC and the title wasn't available
8 and we had to wait for the title. And that
9 was when I realized how big the scheme was and
10 how voluminous it was.

11 BY MR. COMAN:

12 Q. Are you done?

13 A. Yes.

14 Q. I didn't mean to cut you off. Your
15 knowledge level that you just described, that was at
16 the end of the relationship; is that correct?

17 A. Yes.

18 Q. That grew and expanded from your original
19 conversation with Stuart LaBauve when you confronted
20 him about the differential in time; is that correct?

21 MR. McCARTER:

22 Objection to form.

23 THE WITNESS:

24 That is correct.

25 BY MR. COMAN:

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1 Q. All right. Now, you were asked several
2 questions regarding auction houses and you mentioned
3 Manheim Auctions. Okay. How many of those auctions
4 have you been barred from, at least that you know of
5 specifically, Manheim auctions?

6 MR. McCARTER:

7 Object to form.

8 THE WITNESS:

9 I have been told by Manheim New
10 Orleans that I'm barred from all Manheim
11 auctions.

12 BY MR. COMAN:

13 Q. Okay. Did you also check with Manheim
14 Lafayette?

15 A. Manheim Lafayette has barred us, yes.

16 Q. Okay. The non-Manheim auction houses in
17 the industry, you described at length the various,
18 and I'll call them restrictions; is that a fair
19 statement that you're operating under at this point?

20 MR. McCARTER:

21 Object to form.

22 THE WITNESS:

23 Repeat the question.

24 BY MR. COMAN:

25 Q. Sure. Look over here. I'm sorry. The

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1 non-Manheim auctions, the deposits, whatever --
2 whatever relationship you have at this point with
3 non-Manheim auctions --

4 A. Uh-huh.

5 Q. -- in the business relationship, okay,
6 how is that -- is that restricting -- is that
7 adversely affecting you and your business at this
8 minute?

9 MR. McCARTER:

10 Objection to form.

11 THE WITNESS:

12 Yes, it does.

13 BY MR. COMAN:

14 Q. How?

15 A. It -- it limits our ability to procure
16 cars. It limits our ability to write checks on
17 vehicles. We have to pay for the vehicle at the
18 time that we purchase the vehicle, whether title is
19 present or not. The auctions -- the amount of
20 auctions that we can go to limits our ability to get
21 the same inventory that other dealers have access
22 to.

23 Q. Has that -- all those items, have those
24 adversely affected Red Barn's income?

25 A. Yes.

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1 Q. Has it adversely affected Red Barn's
2 business reputation?

3 MR. McCARTER:

4 Object to form. Lack of foundation.

5 THE WITNESS:

6 Yes.

7 BY MR. COMAN:

8 Q. Has that adversely affected your goodwill
9 within the industry?

10 MR. McCARTER:

11 Object to form.

12 THE WITNESS:

13 Absolutely.

14 BY MR. COMAN:

15 Q. Has it also affected the overall
16 valuation of Red Barn at this point?

17 MR. McCARTER:

18 Object to form.

19 BY MR. COMAN:

20 Q. You can answer.

21 A. Absolutely.

22 MR. COMAN:

23 Okay. One moment, please.

24 I don't think I have any further
25 questions at this time.

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1 MR. McCARTER:

2 Okay. I've got to clear up a couple
3 things.

4 RE-EXAMINATION

5 BY MR. McCARTER:

6 Q. So we went in detail over your
7 conversations with Mr. LaBauve before and you said
8 in the initial conversations with him, you said that
9 he concealed the interest issue, but you didn't
10 recall any specifics representations about the
11 timing of interest. Do you remember that?

12 A. He said -- repeat.

13 Q. Okay. So both your complaint and your
14 testimony earlier was that Mr. LaBauve concealed the
15 timing of DSC's interest charging in initial sales
16 meeting that you had with him, but you testified he
17 didn't make any specific statements or
18 representations to you about the interest. Do you
19 recall that?

20 A. Yes.

21 Q. Okay. And so when your attorney just now
22 asked you about did he misrepresent to you in that
23 initial conversation, you're talking about the
24 concealment and not actual statements, correct?

25 A. I don't understand your question.

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1 Q. Okay. So he didn't make any actual
2 statements to you about the timing of interest and
3 when it would start on the DSC line in your initial
4 meeting with Mr. LaBauve?

5 A. No, but the contract stated it.

6 Q. Okay. So you're relying on what's in the
7 contract?

8 A. I'm relying on what's in the contract and
9 what was represented by Stuart LaBauve, which is not
10 the truth --

11 Q. Okay.

12 A. -- the -- the 4 percent, the -- there
13 were -- there were numerous things that weren't
14 true.

15 Q. Okay. We're specifically talking about
16 the timing of when interest began to accrue on the
17 advance. And you testified that Mr. LaBauve did not
18 make any statements to you on that issue in your
19 initial sales meeting with him. Do you recall that?

20 A. Yes.

21 Q. Okay. And there was some testimony just
22 now with your attorney where you were talking about
23 non-Manheim auctions. We -- we covered a handful.
24 Was it three or four non-Manheim auctions that
25 you've dealt at since 2013. Do you recall that?

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1 Again, they were Oak View Auto Auction, Long Beach,
2 Mississippi, Baton Rouge ABC. Okay. Have you dealt
3 at any other Manheim auctions since 2013?

4 A. No.

5 Q. Okay. Have you tried to deal at any
6 other Manheim auction -- non-Manheim auction since
7 2013?

8 A. Yes.

9 Q. Which one?

10 A. I don't know the name of it.

11 Q. Do you know where it was?

12 A. It was, I believe, in Lafayette. We --
13 we signed up and we basically have not gone.

14 Q. So you -- you can go to this -- this
15 non-Manheim auction in Lafayette, you just chose not
16 to?

17 A. I don't -- I -- I don't remember if we
18 were approved or not approved.

19 Q. Okay. So as we sit here today, you don't
20 know whether you can do business at that auction?

21 A. Correct.

22 Q. Okay. Have you tried to go to any other
23 non-Manheim auctions since 2013?

24 A. No.

25 Q. Besides ABC Baton Rouge, have you tried

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1 to go any other ABC auto auctions?

2 A. No.

3 Q. Okay. Have you tried to pass a check at
4 any other non-ABC auction -- I mean, any other ABC
5 auction?

6 A. Have I tried to pass a check?

7 Q. Have you paid with a check at any other
8 ABC auction?

9 MR. COMAN:

10 Objection to form.

11 THE WITNESS:

12 At any another ABC auction, because
13 AB -- you're saying just ABC auctions in
14 whole?

15 BY MR. McCARTER:

16 Q. Okay. You -- you understand that ABC
17 auction is an auction company with multiple
18 locations, right?

19 A. Yes.

20 Q. Okay. And we covered your permissions at
21 ABC Baton Rouge, right?

22 A. Correct.

23 Q. You said you haven't dealt at any other
24 ABC auctions since 2013?

25 A. Correct.



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1 Q. So can I -- can I assume you haven't
2 tried to pay any other ABC auction a check since
3 2013?

4 A. Yes.

5 Q. Okay. Have you tried to pay any -- have
6 you tried to go to any Odessa auto auctions since
7 2013?

8 A. No.

9 Q. Have you tried to go any other
10 independent auctions besides the ones that we just
11 talked about specifically?

12 A. No. The reasoning is because our target
13 market, if you go outside of this market and have to
14 pay transportation fees and everything else to get
15 the vehicle here when you're dealing with a \$2,000
16 car is going to, you know, make you pay more for the
17 vehicle or end up being in the vehicle more
18 generally than if you stayed within the area.

19 Q. Okay. So it would be less profitable for
20 you to go outside of this area of Louisiana?

21 A. Generally, yes.

22 Q. Okay. And have you tried to buy on-line
23 at any wholesale vehicle source like Smart Auction,
24 Copart, anything like that?

25 A. No.